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**ATTORNEY GENERAL OFFICE'S REPORT REGARDING THE  
MARCH 31, 2021, OFFICER-INVOLVED SHOOTING INCIDENT IN  
CLAREMONT, NEW HAMPSHIRE**

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## I. INTRODUCTION

Attorney General John M. Formella announces the completion of the investigation into the officer-involved shooting that occurred in Claremont, New Hampshire on March 31, 2021. The private citizen involved in that incident, Jeffrey R. Ely (age 40), was shot and killed by members of the New Hampshire State Police Special Weapons and Tactics (“SWAT”) team. The purpose of this report is to summarize the Attorney General Office’s factual findings and legal conclusions regarding the SWAT team members’ uses of deadly force against Mr. Ely. The findings and conclusions in this report are based upon various types of information gathered during the investigation, including recorded interviews of witnesses; photographs and videos of the scene of the incident; forensic firearm analysis; radio transmissions made on the evening of the incident; and video recordings, including surveillance footage and body-worn camera footage that captured the events preceding the uses of deadly force.

As provided in RSA 7:6, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law. The Attorney General does not investigate or opine on the particular procedures or tactics used by law enforcement officers. Instead, the Attorney General’s review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law. When a deadly force incident involves multiple officers, the use of force by each individual officer is examined. Thus, the Attorney General’s review focuses on whether, under New Hampshire law, the use of force was justified because each officer that used force

reasonably believed that such force was necessary to defend himself or herself or a third party from what each officer reasonably believed was the imminent use of deadly force.

The uses of deadly force by members of the New Hampshire State Police SWAT team in this incident can be divided into two instances. In the first instance, State Police SWAT team members Trooper First Class (“TFC”) Nicholas Cyr, TFC Stefan Czyzowski, Sergeant Gary Ingham, TFC Shane Larkin, Trooper William Neilsen, and Trooper Noah Sanctuary discharged their firearms in near unison over a period of approximately six seconds. In the second instance, it appears TFC Larkin discharged his rifle three times approximately sixteen seconds after the initial instance of firing has ceased.

Based on the investigation by the Attorney General’s Office into the Troopers’ uses of deadly force, the Attorney General finds that the uses of deadly force against Jeffrey R. Ely by SWAT team members TFC Nicholas Cyr, TFC Stefan Czyzowski, Sergeant Gary Ingham, TFC Shane Larkin, Trooper William Neilsen, and Trooper Noah Sanctuary on March 31, 2021, were legally justified. As such, no criminal charges will be filed against those SWAT team members.

## II. SUMMARY OF THE FACTS

At approximately 10:34 a.m. on March 31, 2021, Donald Woodman reported to the Claremont Police Department that Jeffrey Ely was behaving erratically at 247 Sullivan Street, a large multi-business commercial building. Mr. Woodman was an employee of one of the 247 Sullivan Street businesses and was an acquaintance of Mr. Ely. He reported that Mr. Ely had been having “psychological issues” over the previous couple of months. Mr. Ely’s behavior was more aggressive that morning, Mr. Woodman explained. He said that Mr. Ely was yelling, driving recklessly around the building, and threatening to “shoot everyone.”<sup>1</sup> Mr. Woodman reported that Mr. Ely was driving a maroon GMC Envoy with temporary license plates.

Claremont Police Officers responded and spoke with Mr. Ely at his shop (“shop”).<sup>2</sup> The officers interacted with Mr. Ely for approximately 90 minutes. During their interaction, Mr. Ely reported hearing voices. While it was apparent to the officers that Mr. Ely was having mental health complications, Mr. Ely did not believe he had any mental health problems or that he was imagining the voices. Mr. Ely said that he wanted to harm whoever was making the voices, but did not want to harm himself or anyone in the area. The officers tried to persuade Mr. Ely to get mental health treatment, but he refused to consult with a mental health provider or participate in a mental health evaluation. Ultimately, Mr. Ely refused to speak with the officers further and shut himself inside his shop. The officers left 247 Sullivan Street with the intent to develop a plan to

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<sup>1</sup> Mr. Woodman noted that Mr. Ely did not point a weapon at anyone at that time.

<sup>2</sup> Mr. Ely’s shop was an automotive shop type space, which was not intended to be a residential property. However, a bedroom area had been constructed within the garage and it was evident Mr. Ely had been living there. For ease of reference, this space will be referred to as his “shop.”

gain Mr. Ely's cooperation, including the possibility of petitioning for an involuntary emergency admission.<sup>3</sup>

Later that day, at approximately 2:51 p.m., a fellow tenant of the building, Roger Wright, called 911 and reported that someone driving a maroon GMC Envoy had just shot at three people in the parking lot of 247 Sullivan Street.<sup>4</sup> Mr. Wright said that he went out to the parking lot to take pictures because the driver had been driving aggressively through the parking lot. When he was taking the pictures, the GMC drove away. Mr. Wright took three photographs of a maroon GMC Envoy driving aggressively in the parking lot. *See, e.g.*, Figure 13 (below). The license plate on the rear of the GMC was not legible, but it appeared that it was a paper temporary license plate. Mr. Wright said that the GMC returned shortly thereafter, stopped, and the driver shot an AR-type rifle at the three men through the SUV window. The gunshot did not injure anyone, but struck a truck that was parked nearby. Mr. Wright reported that he last saw the GMC as it drove behind the building, towards Mr. Ely's shop. Surveillance footage from a security camera on the west side of the building captured the encounter in the front parking lot and is consistent with Mr. Wright's recollection of the events.

Claremont Police Officers responded and located Mr. Ely's maroon GMC parked in front of Mr. Ely's shop door. The GMC had temporary paper license plates and its

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<sup>3</sup> An involuntary emergency admission is an involuntary admission to a local emergency room or community mental health center for a mental health evaluation. *See* Department of Human Health and Services, *Involuntary Admissions*, <https://www.dhhs.nh.gov/dcbcs/nhh/eligibility.htm> (last visited July 20, 2021); *see generally* RSA 135-C:27-:33.

<sup>4</sup> Mr. Wright did not know Mr. Ely. Additionally, while the vehicle's license plate cannot be seen on any of the surveillance footage from 247 Sullivan Street or Mr. Wright's photographs, the vehicle Mr. Wright photographed is consistent with Mr. Ely's maroon GMC Envoy that was parked in front of his shop. Moreover, the camera footage monitored the only entrance to the building and the maroon GMC did not use that entrance before Claremont Police Officers arrived. Finally, investigators only found Mr. Ely's maroon GMC Envoy on the property.

driver's door was open. Police officers evacuated the remainder of the building as several Claremont Police Officers attempted to communicate with Mr. Ely, who was barricaded inside of his shop. Mr. Ely's responses to the Claremont Police Officers' communications were angry and non-compliant. Mr. Ely discharged a gun on three occasions while the officers were trying to talk to him, firing a total of four rounds.<sup>5</sup> The officers, who were positioned up against the exterior walls of Mr. Ely's shop, did not know at what—or at whom—Mr. Ely was shooting. It appeared to the officers as though Mr. Ely had “lost touch with reality” and may have believed the Claremont Police Officers were “the voices” he had been hearing.

The Claremont Police Department ultimately requested the assistance of the New Hampshire State Police SWAT team. The SWAT team and three members of the State Police Crisis Negotiation Unit (“CNU”) responded to the scene. As SWAT and CNU members arrived on scene, they were briefed with varying extents of background information on both Mr. Ely and the circumstances surrounding this incident, as set forth in more detail below. A New Hampshire state trooper applied for an arrest warrant for Mr. Ely and a search warrant for his shop. At approximately 5:53 p.m., the Sullivan County Superior Court issued a warrant for Mr. Ely's arrest for reckless conduct with a deadly weapon, *see* RSA 631:3, II, and a warrant to search the building at 247 Sullivan Street.

At the outset of their response, the CNU gathered background information about Mr. Ely, which they hoped to use to establish a rapport with him to resolve the incident peacefully. At one point, a negotiator briefly spoke with Mr. Ely on the phone, but Mr.

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<sup>5</sup> These gunshots were documented in several of the police officers' reports, the dispatch log, and captured by various Claremont Police Department body-worn cameras.

Ely immediately cursed at him and disconnected the call. Mr. Ely would not communicate with the negotiator by any means, including through social media, phone calls or text messaging. It seemed that Mr. Ely shut his cellphone off at one point.

The SWAT team, among other things, established a perimeter around the property and evacuated the municipal police officers out of danger by using the SWAT team's armored vehicle, called "the Bear." At approximately 6:53 p.m., the three Claremont Police Officers and a Newport Police Department Lieutenant, who were in the area immediately outside of Mr. Ely's shop were evacuated. At that point, the Claremont Officers had been attempting to communicate with Mr. Ely and deescalate the situation for nearly four hours. Mr. Ely had been completely unresponsive for the prior 30 to 45 minutes, and had not demonstrated any inclination to peacefully surrender.

The SWAT team drove the Bear to the back of Mr. Ely's shop. In the Bear were the following New Hampshire State Police troopers: Trooper Daniel Livingstone (driver); Sergeant Gerard Ditolla (SWAT commander); TFC Nicholas Cyr (assistant SWAT commander); TFC Shane Larkin (assistant SWAT commander); TFC Stefan Czyzowski (SWAT member); Sergeant Gary Ingham (SWAT member and SWAT canine handler); Sergeant Christopher Ladd (SWAT Medic); TFC Matthew Partington (Bomb Technician); Trooper Charlie Newton (CNU); and Trooper Hawley Rae (CNU). At approximately 7:25 p.m., the SWAT team used the Bear to pull Mr. Ely's GMC Envoy out of the way and positioned the Bear in front of Mr. Ely's door. Realizing that the team might have to eventually force its way into the shop, the SWAT team affixed a long metal ram to the front of the Bear. The Bear also had a loud public address system, called a long range acoustic device ("LRAD") which was directed toward Mr. Ely's shop.

Trooper Rae, a certified crisis negotiator, tried to communicate with Mr. Ely with the LRAD. Trooper Rae identified the SWAT team as members of State Police and asked Mr. Ely to please answer his cellphone. She informed him that they wanted to talk with him. At the same time, Trooper Newton repeatedly tried to contact Mr. Ely through his cellphone. Mr. Ely did not respond to any of the communication attempts by the CNU team.

The SWAT team knew that Mr. Ely was a former maintenance worker in the building and likely had access to the entire building. The building itself was extremely large, with numerous points of egress. The SWAT team was concerned that if Mr. Ely moved into other areas of the building, it would be both difficult and extremely dangerous to search for him inside. If Mr. Ely fled the building with his rifle, he would pose a threat to the nearby residential neighborhoods, as well as the other law enforcement officers on the perimeter of the building and the first responders who were staged at the command post, just west of the building's driveway.

At approximately 7:50 p.m., unsure if Mr. Ely had harmed himself or whether he had moved into another portion of the building, the SWAT team used the metal ram on the Bear to push Mr. Ely's front door open. Almost instantaneously, Mr. Ely fired his rifle at the Bear. The troopers within the Bear heard the gunfire, saw the muzzle flash from within Mr. Ely's shop, and saw sparks as bullets impacted the front area of the Bear.<sup>6</sup> The SWAT team immediately backed the Bear up to create distance away from

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<sup>6</sup> Troopers estimated Mr. Ely discharged as many as 10 to 15 rounds. While the exact number of rounds Mr. Ely fired was unable to be determined, three bullet defects were found on the ram that was affixed to the front of the Bear.

Mr. Ely's door. Trooper Rae continued trying to communicate with Mr. Ely, pleading with him to drop his gun and to turn his cellphone back on.

Shortly thereafter, the SWAT team moved the Bear back into position in front of Mr. Ely's door. Mr. Ely's door was slightly open giving the SWAT team a partial view into his shop. The team saw Mr. Ely pacing around and ducking behind objects, all while holding an AR-style rifle. Mr. Ely pointed the rifle directly toward the Bear several times. At certain moments it appeared Mr. Ely had more than one rifle. Trooper Rae continually asked Mr. Ely to drop the firearms and to leave the shop with his hands up. She told him that the troopers were not there to hurt him and that they wanted to talk with him. At times, members of the SWAT team could see Mr. Ely was yelling and appeared angry, but they could not hear him. Trooper Rae informed Mr. Ely that they could not hear him, that they wanted to talk with him, and asked him to turn his phone on.

As of approximately 8:12 p.m., Mr. Ely had remained out-of-sight for 10 to 15 minutes. The SWAT team used the Bear's ram again to push Mr. Ely's front door fully open. The door was forced toward the right, or north side of Mr. Ely's shop. As the team pushed the door open, Trooper Rae reminded Mr. Ely that they were the police and that they were going to push the door fully open so they could see him. Mr. Ely did not shoot at them during this second use of the ram.

Once the door was fully opened, members of the SWAT team had a better view of Mr. Ely. Although their view of Mr. Ely varied from a full view at times to a partial view, the troopers could clearly see that Mr. Ely still held an AR-style rifle. In fact, at one point, it appeared to Sergeant Ditolla that Mr. Ely was holding one AR-style rifle in each hand. Throughout this time, Trooper Rae continued asking Mr. Ely to put the gun down

and to come out with his hands up. Mr. Ely never complied, or attempted to comply, with Trooper Rae's requests.

Eventually members of the SWAT team saw Mr. Ely, still holding a rifle, put on a jacket. The troopers believed that, in putting on the jacket, Mr. Ely was intending to exit the shop. Trooper Rae continued to ask Mr. Ely to put the rifle down and exit the shop with nothing in his hands. Eventually, Mr. Ely moved from further inside the shop to an area closer to the front door, still holding the rifle.



*Figure 1 – Photograph taken by Sergeant Ditolla from the Bear of Mr. Ely Holding an AR-Style Rifle (circled in yellow) at Approximately 8:37 p.m.*

As Mr. Ely got closer to the door, the tone and pace of Trooper Rae's voice heightened as she pleaded for Mr. Ely to drop the gun and for him to stop. At the same time, Sergeant Ingham, TFC Larkin, TFC Cyr, and TFC Czyzowski exited the Bear.

At approximately 8:39 p.m., Mr. Ely—still holding the rifle in his hand and in defiance of Trooper Rae's vigorous commands to drop his weapon—approached the

shop's doorway as if he was about to leave. That action prompted Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czynowski, Trooper Neilsen, and Trooper Sanctuary to fire their weapons at Mr. Ely, striking him several times. As Mr. Ely was struck by gunfire, he shifted and turned to his right. As Mr. Ely reacted to the gunshots, he began raising his rifle upward. The troopers continued to fire their weapons and Mr. Ely ultimately fell backward into a seated position, partially behind the front door of his shop. Mr. Ely's rifle, which was still loaded and later found with the safety off, came to rest at his feet. Approximately 16 seconds after the initial volley of gunfire, TFC Larkin reported that he saw the left side of Mr. Ely's body move. Concerned that Mr. Ely was still alive and might be trying to shoot and kill them in a final stand, TFC Larkin fired three more rounds at Mr. Ely. After the shooting, the SWAT team medic, Sergeant Ladd, approached Mr. Ely and determined he was deceased.<sup>7</sup>

Despite Mr. Ely shooting a rifle at the three private citizens in the parking lot, firing four rounds in the immediate area of the Claremont Police Officers, and firing numerous rounds at the SWAT team members in the Bear, no law enforcement officers or other private citizens were physically injured during this incident.

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<sup>7</sup> Before Sergeant Ladd entered Mr. Ely's shop with the SWAT team, the team used a remote controlled robot to check Mr. Ely's condition.

### III. THE SCENE

After Mr. Ely shot at the private citizens in the parking lot, he barricaded himself in his shop at 247 Sullivan Street, which was a large multi-use commercial building.

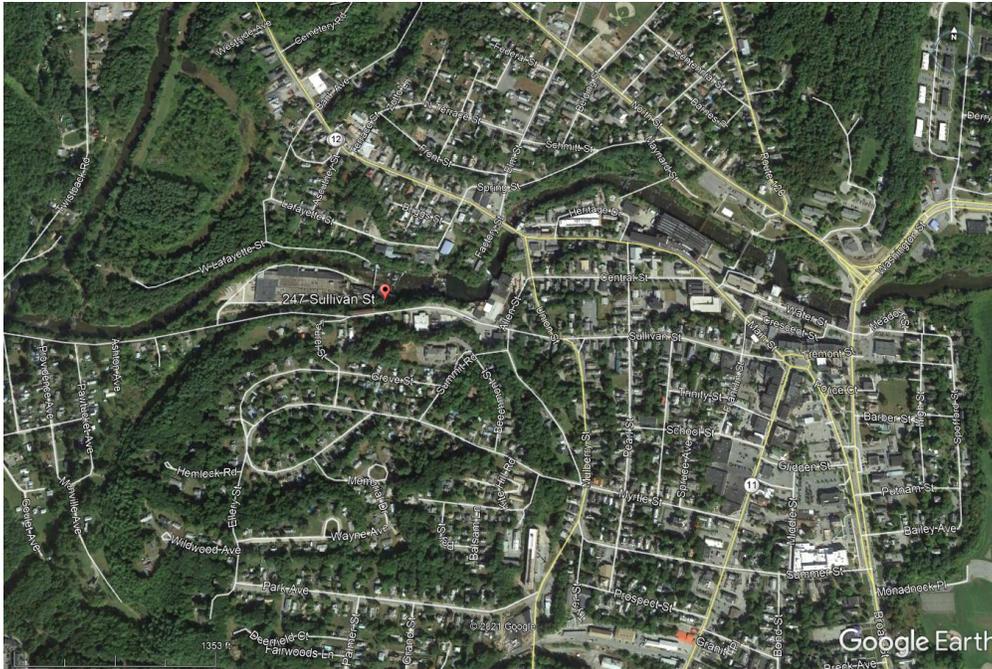


*Figure 2 - Overhead Photograph of 247 Sullivan Street Depicting the Size of the Building*

The building is abutted by the Sugar River to the north and by Sullivan Street to the south. The building is close to downtown Claremont, approximately one half-mile from the intersection of Sullivan Street and Route 103, and is in close proximity to several residential neighborhoods, especially to the north, east, and south.<sup>8</sup>

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<sup>8</sup> The building is also within close proximity to the Bluff Elementary School, which is located at 10 Summit Street, Claremont, NH.



*Figure 3 - Google Earth Satellite Image of 247 Sullivan Street in Relation to Other Claremont Residences*

Apparently designed as an open concept building, it had since been subdivided. Several businesses operated out of the subdivided spaces. The sections of the building were divided with wood, chicken wire, chain-link fencing, and plastic sheeting.



*Figure 4 - Still Image from CPD Officer Justin Vivian's Body-Worn Camera Showing the Interior of 247 Sullivan Street*



*Figure 5 - NHSP Drone Image of the Southeast Corner of 247 Sullivan Street*

Mr. Ely's shop was on the south side of the building, closest to Sullivan Street. The interior of the shop was cluttered with, among other things, various tools, automotive parts, equipment, tires, and a partially disassembled automobile.



*Figure 6 - Photograph of the Interior of Mr. Ely's Shop Taken from the Front Doorway. Mr. Ely's Body Has Been Obscured. No Other Edits Have Been Made to This Photograph.*



*Figure 7 - Interior of Mr. Ely's Shop*

Mr. Ely's shop was an automotive-type space and makeshift living quarters. Those living quarters consisted of a single room in the northeast corner of the shop that had, among other items, a bed, closet, clothing, food, a microwave, and a toaster.



*Figure 8 - Bedroom Area in the Northeast Corner of the Shop*



*Figure 9 - Interior of Bedroom Area*

Investigators also found additional guns and ammunition in a closet area of the room.



*Figure 10 - Firearms and Ammunition Found in the Closet of the Bedroom*

In addition to the sleeping area, a crude shower had been fabricated in one of the garage bays.



*Figure 11 - Shower in Mr. Ely's Shop*

There were several points of entry into Mr. Ely's shop: (1) a solid windowless metal door that led outside; (2) a windowless wooden door that led into the building, which was secured shut with a large ratchet strap; and (3) two large garage bay doors. All of the windows were either boarded up from the inside of the garage, or otherwise obstructed from the inside. In short, there was no way to see into Mr. Ely's shop from the outside.

#### IV. THE INVESTIGATION

##### A. Private Citizens Who Witnessed Mr. Ely's Actions or Statements

(1) *Donald Woodman*

Mr. Woodman was employed by a business based out of 247 Sullivan Street and was a longtime acquaintance of Mr. Ely. At 10:34 a.m. on March 31, 2021, Mr. Woodman reported to the Claremont Police Department dispatch that Mr. Ely was making threats and acting “strange.” Mr. Woodman was interviewed on April 14, 2021, by a New Hampshire State Police detective.<sup>9</sup> Mr. Woodman explained that he and Mr. Ely had worked together in the building and that he had known Mr. Ely for “quite a while.” Mr. Ely had an arrangement where he would work off his rent to Mr. Woodman in exchange for space within the building, but Mr. Ely had stopped coming to work. Mr. Woodman said that Mr. Ely had only recently begun living inside his shop, and described him as “destitute.”

Although Mr. Woodman said that Mr. Ely was a “tremendously skilled” tradesman, Mr. Woodman observed him having “psychotic episodes” over the previous six months. Mr. Ely accused various people in the building of harassing him and told Mr. Woodman that he was hearing voices in his head.

Earlier in the day of the shooting, Mr. Woodman saw Mr. Ely driving recklessly in the parking lot and confronted him about it. Mr. Ely said, “I’m done with this, I’ll kill them all.” Mr. Woodman asked him if he was referring to Mr. Woodman and Mr. Ely said, “Get the fuck out of here,” and threw a bottle at him. He could hear Mr. Ely “raging” inside his shop, but Mr. Woodman knew that Mr. Ely was alone. Mr. Woodman

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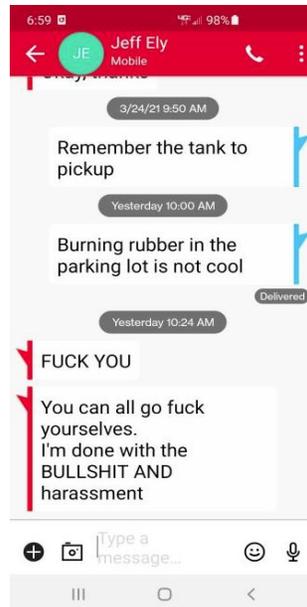
<sup>9</sup> The detective called Mr. Woodman on April 1, 2021, but Mr. Woodman did not answer. The detective left a voicemail and the two ultimately spoke on April 14, 2021.

then called the Claremont Police Department. Although he had never seen them, Mr. Woodman believed Mr. Ely had firearms. Mr. Ely had told him that he always carried a firearm after an “unrelated incident” a year prior.

Mr. Woodman told one of the first responding CNU troopers that Mr. Ely admitted to him that he was “all fucked up.” Mr. Woodman reported that Mr. Ely was seeing and hearing things that were not actually there. Mr. Woodman said that Mr. Ely was in need of psychological help.

(2) *Kurt Zentmaier*

On April 2, 2021, a state trooper interviewed Mr. Zentmaier. Mr. Zentmaier was the former owner of the 247 Sullivan Street, and current property manager. In both roles, Mr. Zentmaier had frequent interactions with Mr. Ely, both in the past and on the morning of the shooting. Mr. Zentmaier explained that his role as the property manager was to oversee maintenance of the building itself, as well as handling tenant transitions. He interacted with Mr. Ely only to collect rent, and on several occasions, to either hire Mr. Ely for welding jobs at other properties in Claremont or to refer him for other welding jobs in Claremont. Mr. Zentmaier said that on the morning of March 31, 2021, he saw Mr. Ely driving recklessly in the parking lot of the building. In response, Mr. Zentmaier and Mr. Ely had the following text message exchange:



*Figure 12 - Screenshot of Mr. Zentmaier's Text Message Communication with Mr. Ely on March 31, 2021*

After receiving those text messages from Mr. Ely, Mr. Zentmaier spoke with Donald Woodman, and they decided to call the Claremont Police Department. Mr. Zentmaier had never witnessed any strange behavior on Mr. Ely's part prior to that day, but had received a call the previous Saturday from a neighboring tenant, who reported that Mr. Ely was yelling and "erratic."

Mr. Zentmaier never had any basis to evict Mr. Ely in the past based on what he had seen or what had been reported to him about Mr. Ely's behavior. Mr. Zentmaier detailed one incident, however, that had been reported in the building a year before in which an "internal person" sent threatening messages to other tenants. They quickly discovered that it was another employee doing what Mr. Zentmaier described as just "playing tricks." Mr. Ely had received some of these messages at that time. Mr. Zentmaier implied to investigators that it may not have helped Mr. Ely's mental condition to have been receiving messages from someone claiming to be watching him, regardless of whether it was a trick or not.

(3) *Roger Wright*

At approximately 3:40 p.m. on March 31, 2021, investigators with the New Hampshire State Police interviewed Mr. Wright. The interview took place after State Police had responded to assist the Claremont Police Department with Mr. Ely and the “shots fired” call.

Mr. Wright said that at one point that day, his employee, Benjamin Wolfe, came into his office and told him that someone was driving recklessly in the parking lot. Mr. Wolfe reported to Mr. Wright that the driver had also pulled up to him in the parking lot and yelled “profanities.” Mr. Wright went out to the parking lot to document the reckless driving. While he was unable to make a video of the driving, he was able to take three photographs of the SUV.



*Figure 13 - One of the Three Photographs Taken by Mr. Wright*

Mr. Wright said that at a certain point, the SUV “came peeling back in” to the parking lot and the driver “made a couple of comments” to him and Mr. Wolfe. While he could not recall exactly what the driver said them, Mr. Wright remembered him saying,

“Do you hear the voices?” The driver then pointed a rifle at them and fired a single round at them. Mr. Wright said that the bullet went between him and Mr. Wolfe and hit a truck near where they were standing. Mr. Wright and Mr. Wolfe ran into the building and called 911.

Although Mr. Wright did not know the driver and had never seen him before, Mr. Wright’s description of the SUV that he captured in his photographs is consistent with Mr. Ely’s maroon GMC Envoy.

(4) *Benjamin Wolfe*

At approximately 3:50 p.m. on March 31, 2021, investigators with the New Hampshire State Police interviewed Mr. Wolfe. Mr. Wolfe reported that, while he was standing near a dumpster at 247 Sullivan Street, he heard a vehicle driving at a high rate of speed around the building. He said that a truck<sup>10</sup> came around the corner and stopped in front of him. The driver then rolled down his window, screaming insults at him. The driver also asked Mr. Wolfe if he “heard the voices” and told him to “stop messing with [him].” Mr. Wolfe reported that the driver then continued driving recklessly and at a high rate of speed in the parking lot.

Mr. Wolfe contacted his employer, Mr. Wright, who joined him outside and attempted to video record the reckless driving. The driver then “suddenly drove rapidly towards them,” came to a stop, rolled his window down, and pointed a “rifle” at him and Mr. Wright. The driver then fired one round from the rifle at them, missing him by approximately eight feet. The round struck a pickup truck that was owned by one of the other employees. The driver then sped off. Mr. Wolfe and Mr. Wright ran into the

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<sup>10</sup> While Mr. Wolfe characterized the vehicle he saw as a truck, it is apparent that the vehicle he saw was actually Mr. Ely’s GMC Envoy.

business and called the Claremont Police Department. Mr. Wolfe had never before seen the driver.

## **B. Private Citizens Who Heard the Incident**

### *(1) Doris McCrossin*

On April 2, 2021, investigators with the New Hampshire State Police interviewed Ms. McCrossin. Ms. McCrossin lives on Laurel Street, which is in a residential neighborhood south of 247 Sullivan Street. She reported that during the afternoon of March 31, 2021, she was home with a friend when she observed a police car parked at the end of her street. Her friend approached the police officer. The police officer told her friend that there was a “stand by” at the nearby “mill,” 247 Sullivan Street. The mill was not visible from Ms. McCrossin’s residence.

Before going to bed at 9:00 p.m., Ms. McCrossin heard someone yell, “Come out with your hands up!” She reported that after she was in bed, she heard approximately five to seven gunshots.

### *(2) Scott Little*

Investigators with the New Hampshire State Police interviewed Mr. Little on several occasions. Initially, Mr. Little was interviewed on April 2, 2021.<sup>11</sup> Mr. Little lives on Sullivan Street, a short distance away from 247 Sullivan Street.

Mr. Little told investigators that on March 31, 2021, he was unable to return to his residence because of the heavy police presence in the area. He attempted to ascertain what was going on by using his cellphone to access surveillance video from cameras attached to his home. Mr. Little reported that the video was too dark for him to see

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<sup>11</sup> Investigators spoke with Mr. Little several more times to obtain the footage from his surveillance cameras and to determine what his direct observations of the incident were.

anything, but he did hear the sound of gunshots on the recording. Mr. Little shared a video clip containing the sounds of the gunshots with four or five his friends. Mr. Little also posted some photographs of the incident on his Facebook page, but took them down before he was interviewed. When told that someone had posted the video from his camera on Facebook, Mr. Little denied knowing the individual who posted the video, and stated that while he had shared the video with a few people, the individual who posted the video was not one of them.

Mr. Little returned to his home later in the night, and observed several police cruisers parked on the street, and a State Police SUV parked in his front yard. The investigators who interviewed Mr. Little saw video cameras mounted on the side of his home, facing in the direction of 247 Sullivan Street.

On April 26, 2021, Mr. Little told investigators via telephone, that at the time of the shooting incident on March 31, 2021, he and his wife were forced to wait at a police roadblock at Twistback Road and Sullivan Street, approximately one quarter of a mile from his home.<sup>12</sup> While they waited, he and his wife heard gunshots. Mr. Little described hearing a barrage of gunshots, followed by a pause, and then more gunshots. He said, “We could hear a lot of gunshots going off all at once and when the dust seemed to settle we were surprised to hear a few more gunshots a few seconds later.” Mr. Little described the length of the pause between the first volley of gunfire and the last two shots as a “noticeable gap,” and estimated it to be six or seven seconds long. When informed that the audio recording from his camera contains a pause between the gunshots of

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<sup>12</sup> On July 13, 2021, during a follow-up conversation with Mr. Little, he reported that he was initially at Twistback Road, but after he could not get through the roadblock, he and his wife either went shopping or to dinner. After that, they tried to drive to his residence from the east side of Sullivan Street, but were stopped near the intersection of Tyler Street and Sullivan Street.

approximately 15 to 17 seconds, Mr. Little stated that he did not recall the pause being that long.

On April 29, 2021, Mr. Little emailed investigators and stated that, “[a]s far as remembering a delay between the first volley and the last 3...my wife remembers like I do...well over 10 seconds.” In a subsequent phone conversation on May 4, 2021, Mr. Little explained that his original estimate of a six or seven second pause between the gunshots was not accurate, and that after discussing it with his wife and refreshing his memory, he believed the pause was “well over 10 seconds.”

After speaking with his friends, Mr. Little confirmed to investigators that one of the individuals he shared the video with had in turn shared it with the individual who posted it to Facebook. Via text message, Mr. Little provided investigators with a still image from his surveillance cameras for the purpose of confirming the angle of the cameras and the accuracy of the date and time of the recording. On April 9, 2021, Mr. Little provided investigators with the SD memory card containing the recording from his camera.

(3) *Donna Little*

On July 13, 2021, an investigator from the Office of the Attorney General interviewed Mrs. Little. Mrs. Little is married to Scott Little. Mrs. Little’s recollection of the events of March 31, 2021, was consistent with Mr. Little’s. With regard to hearing gunfire, Mrs. Little stated that she heard “a lot of shots and it lasted for about three or four seconds. It got quiet for a few seconds and then she heard three or four more shots.” Mrs. Little did not remember how long the pause between the first shots and the last three or four shots was.

### **C. Friends and Acquaintances of Jeffrey Ely**

#### *(1) Anonymous Witness*

At approximately 3:45 p.m. on March 31, 2021, investigators with the New Hampshire State Police interviewed a witness who wished to remain anonymous (hereinafter referred to as “Anonymous” with male pronouns). Anonymous had been friends with Mr. Ely “since diapers.” He said that he had, “significant insight into [Mr. Ely’s] mental state.” State Police investigators spoke with Anonymous hours before the shooting incident while Mr. Ely was still barricaded inside his shop.

Anonymous called Mr. Ely “Jeff Ely” and estimated he was approximately 36 years old. Anonymous said that Mr. Ely had resided in the building at 247 Sullivan Street for “many years.” He reported that Mr. Ely was a former maintenance employee in the building. He believed Mr. Ely was likely familiar with the layout of the entire building and likely had access to keys for every door.

Anonymous showed investigators Mr. Ely’s Facebook profile, which had the vanity name “Jeff Ely.” Anonymous explained that over the previous couple months, Mr. Ely had “started to lose it,” which Anonymous attributed to a methamphetamine addiction. Anonymous suspected Mr. Ely may have been “cooking” methamphetamine in the building. He explained that Mr. Ely believed that there were “people fucking with his head.” Anonymous was concerned that Mr. Ely might harm his dog based upon recent Facebook posts that referenced the dog.<sup>13</sup>

Anonymous reported that Mr. Ely often carried a handgun on his person, which he believed was a nine millimeter caliber. He was aware that Mr. Ely had access to

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<sup>13</sup> Mr. Ely’s dog was not harmed or injured as part of this incident.

“rifles,” but Anonymous was unsure how many or what types of rifles. Anonymous said that Mr. Ely would not “go down without a fight.” He reported that Mr. Ely had “shot someone before.” Anonymous would not elaborate on what he meant in stating that Mr. Ely had “shot someone before.”

(2) *Heidi Burrows*

On April 9, 2021, an investigator with the New Hampshire State Police interviewed Mrs. Burrows. Mrs. Burrows’ husband had worked with Mr. Ely and the two were once friends. Mrs. Burrows believed Mr. Ely had been living at his shop for some time. He moved there after breaking up with his girlfriend in Vermont. Mrs. Burrows believed Mr. Ely suffered from depression. She reported that Mr. Ely’s Facebook posts had changed in the days leading up to the shooting. While she had never seen him intoxicated, Mrs. Burrows thought Mr. Ely drank alcohol and smoked marijuana. She described Mr. Ely as a “nomad,” who would go away for long periods of time and then reappear.

(3) *Jesse Lynch*

On April 1, 2021, an investigator with the New Hampshire State Police interviewed Mr. Lynch via telephone. Mr. Lynch rented a space at 247 Sullivan Street. He reported that he did not really know Mr. Ely, but he had previously had interactions with Mr. Ely’s dog. Mr. Lynch was, however aware that Mr. Ely lived in his shop at 247 Sullivan Street. He last saw Mr. Ely on March 24, 2021. He stated that Mr. Ely “didn’t look so hot.” Mr. Lynch said that he looked “tired and stressed” and it appeared he had been “drinking heavily.” Mr. Lynch said that Mr. Ely was “deteriorating slowly” before his eyes.

(4) *Lauren Holloway*

On April 1, 2021, an investigator with the New Hampshire State Police interviewed Ms. Holloway. When Ms. Holloway heard about the standoff at 247 Sullivan Street on the news, she contacted Claremont Police Department's dispatch and told them that she had information that might assist with the investigation.<sup>14</sup> Ms. Holloway explained that she and Gary Barnet (see Section 5 below) were friends with Mr. Ely in elementary school. Her father was Mr. Ely's teacher. Ms. Holloway said that, before the March 31, 2021, shooting, Mr. Ely's name had come up in a conversation with Mr. Barnet. In response, Ms. Holloway viewed Mr. Ely's Facebook page and saw that he was posting bizarre things that were a "red flag" that he needed help. She said Mr. Ely posted that he had a microchip in his head and that he was going to "kill some mother fuckers." Ms. Holloway reached out to Mr. Ely via social media, but his only response was that she was trying to telepathically speak to him.

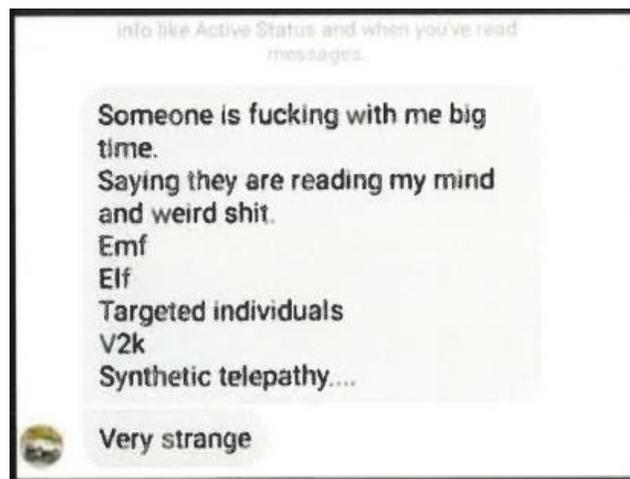


Figure 14 - Screenshot of Social Media Message from Mr. Ely to Ms. Holloway

<sup>14</sup> The Claremont Police Department's dispatch log documented Ms. Holloway's call at 3:31 p.m. on March 31, 2021. The following was detailed in the log: "Lauren called advised that Jeffrey is posting on Facebook about being done with life and killing people she also advised that he is currently living at the shop."

Ms. Holloway said that Mr. Ely struggled with the untimely death of his mother. Ms. Holloway said that Mr. Ely was not close with his father or brother. She thought that the family disconnect, Mr. Ely's anger issues, mental health issues, and delusions combined to make a recipe for disaster.

(5) *Gary Barnet*

On April 1, 2021, an investigator with the New Hampshire State Police interviewed Mr. Barnet. Mr. Barnet told investigators that he and Ms. Holloway went to elementary school with Mr. Ely. Mr. Barnet began distancing himself from Mr. Ely when Mr. Ely started "trouble making" and using "drugs." Mr. Ely also suffered from progressive mental health issues. Mr. Barnet said that Mr. Ely had expressed a "hate for cops" after the "George Floyd stuff." Mr. Barnet reported that Mr. Ely used Suboxone, Adderall, and methamphetamine. He believed Mr. Ely suffered from a combination of: (1) his drug use; (2) guilt from telling his mother that he "fucking hated her before she killed herself"; and (3) that he was an overall "angry guy."

(6) *Jacob Freedman*

On April 2, 2021, an investigator with the New Hampshire State Police interviewed Mr. Freedman. Mr. Freedman owned 247 Sullivan Street. Mr. Ely was renting space in the building when Mr. Freedman purchased the building in December 2019. While he was aware that Mr. Ely did some metal and automotive work on the side, he did not believe that Mr. Ely ran a business out of the shop. Mr. Freedman had suspected Mr. Ely was living in the space, but thought that it would have been hard to evict him for that reason. Mr. Ely worked at the building to pay his rent, but he was not dependable. Based upon seeing Mr. Ely's car parked at the building at odd hours, Mr.

Freedman suspected that Mr. Ely started living in the building in the spring or summer of 2020. Mr. Ely used a Windsor, Vermont address on his lease paperwork.

Mr. Freedman said that some of the tenants informed him that they had negative interactions with Mr. Ely.

#### **D. First Responding Claremont and Newport Police Officers**

##### *(1) Claremont Police Officers*

The Claremont Police Department issues body-worn and cruiser cameras to officers that record both audio and video.<sup>15</sup> Investigators obtained cruiser and body-worn camera footage from the Claremont officers' interactions with Mr. Ely during both the morning mental health response to his shop, and the afternoon shots fired call that led to the use of deadly force by the SWAT team members. None of the camera footage captured Mr. Ely firing rounds at the SWAT team or the SWAT team members' use of deadly force because the Claremont officers had been evacuated by that time. Likewise, none of the Claremont officers were present or in a position to observe either exchange of gunfire.

##### *i. Morning Response to 247 Sullivan Street on March 31, 2021, for Mental Health Concerns*

At approximately 10:34 a.m. on March 31, 2021, Claremont Police Sergeant Joshua Wade and Officer Justin Vivian were dispatched to 247 Sullivan Street for the report that Mr. Ely was acting erratically and threatening other business tenants. After speaking with witnesses about his conduct,<sup>16</sup> Sergeant Wade and Officer Vivian went to

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<sup>15</sup> Officers have the ability to mute the body-worn cameras. The Claremont officers who responded to this incident muted the audio recording function of their cameras at various times throughout this incident. Most of the interactions with Mr. Ely, however, were captured by at least one of the officers' body-worn cameras.

<sup>16</sup> Further details of the witness observations are included in section IV(a) above.

Mr. Ely's door and tried to communicate with him. Initially, Mr. Ely refused to open the door, yelling, "Go fuck yourself!" to the officers. They reported that it became apparent to them that Mr. Ely was experiencing delusions and paranoia.

Mr. Ely was agitated and told the officers that he was being harassed and spied on "24/7." Mr. Ely said "they" could see everything he did and were speaking to him. He said that the voices he was hearing were threatening him and the voices were changing to sound like the voices of people he knew. Mr. Ely explained that he was hearing voices from inanimate objects, such as an electric heater. He said the voices were coming "out of thin air."

After speaking with Mr. Ely for over 20 minutes through his door, the officers were able to convince Mr. Ely to open the door. Mr. Ely told the officers that the voices he was hearing said they would put a chip in his neck. He also discussed "remote neural monitoring" and "drones." Mr. Ely reported that the voices told him that he was going to kill himself and hurt his dog. Mr. Ely said he was being harassed "24/7" and that he was "losing it." He said "they" could somehow read whatever he was reading. He discussed a "V2K" transmitter, which he said made it so they could bypass his ears and talk directly to his brain. He said the voices wanted him to kill himself and told him that that was the only way they would stop. He also said that the voices were trying to get him to say things. Mr. Ely said, "I know I sound bat shit crazy saying that." Mr. Ely said that the only people he wanted to harm were the people who were "harassing" him with the voices.

The officers spent over an hour talking with Mr. Ely and trying to get him to agree to a mental health evaluation. While they were speaking with Mr. Ely, he was

drinking an alcoholic beverage. Mr. Ely had what appeared to be a 30-round AR-style rifle magazine with white tape in the left pocket of his cargo shorts. At one point, Mr. Ely had a gun strapped to his back. He told the officers that it was an airsoft gun and that he did not have any firearms.<sup>17</sup> The officers were unsure whether the firearm or the rifle magazine were real, or whether they were airsoft devices.

Mr. Ely eventually got angry, slammed the door and cursed at the officers. Mr. Ely refused to go for a mental health evaluation or receive a call from a mental health counselor. The officers left and decided to document the incident and start the paperwork process to obtain an Involuntary Emergency Admission to a hospital for Mr. Ely.

*ii. Afternoon Response to the Report of Shots Fired*

Later that day, at approximately 2:55 p.m., Claremont police officers responded back to 247 Sullivan Street for the report that Mr. Ely had shot at private citizens in the parking lot of the building. Sergeant Wade, having responded to the mental health call earlier that morning, noticed that Mr. Ely's GMC Envoy was parked at a different angle, with the driver's side door open. Three Claremont officers—Sergeant Wade, Detective Joshua Peavey, and Deputy Chief Mark Grasso—and one Newport police officer—Lieutenant Craig Robertson—positioned themselves against the east and south walls of Mr. Ely's shop.

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<sup>17</sup> An airsoft gun is a replica toy gun that uses air to fire a low-powered projectile. Airsoft guns are often used for recreational activities.



*Figure 15 - Photograph Taken of the Municipal Police Officers Outside of Mr. Ely's Shop*

The officers attempted to communicate with Mr. Ely and de-escalate the situation. Sergeant Wade, having interacted with Mr. Ely in the morning, said, “[Mr. Ely] was totally different that morning than he was when we went back.” In a review of audio and video from Sergeant Wade’s body-worn camera, Mr. Ely can be heard yelling, “Go fuck yourself,” when Sergeant Wade first knocked on his door during this afternoon response. Mr. Ely continually screamed, “Go fuck yourself” throughout the time the Claremont officers were trying to speak with him. The officers believed Mr. Ely was having difficulty distinguishing between the voices of the officers and the voices he reported hearing in his head earlier. Sergeant Wade explained that at certain points, Mr. Ely would scream, “Where are you?” followed by a gunshot.

While the Claremont and Newport officers were talking with Mr. Ely, Mr. Ely discharged a firearm three separate times.<sup>18</sup> The officers were unsure about the direction

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<sup>18</sup> The sound of the gunshots was captured on the Claremont Police Officers’ body-worn cameras.

in which Mr. Ely was firing the rounds, but they did not see any rounds exit the building.

At approximately 6:52 p.m., after nearly four hours outside of Mr. Ely's shop, the SWAT team evacuated the Claremont and Newport officers.

The Claremont Police Department's body-worn camera footage captured the Claremont officers' calm and patient efforts to negotiate with Mr. Ely. The officers repeatedly attempted to establish a rapport with Mr. Ely and explained that they wanted to help him. The following is a summary of the instances captured by the Claremont Police Department's body-worn cameras where Mr. Ely discharged a firearm:

➤ Approximately 4:10 p.m.:

**Sergeant Wade**      Jeff, it's Wade, it's the cop. I know you don't really like cops.

**Mr. Ely:**                Shut the fuck up! (Followed by a single gunshot)

➤ Approximately 4:34 p.m.:

**Detective Peavey:**    Jeff, do you got any family in the area? (No response) Hey Jeff!

**Mr. Ely:**                What God damn it?

**Detective Peavey:**    Do you have any family that lives around here?

**Mr. Ely:**                Go fuck yourself, I'm done!

**Detective Peavey:**    What's your dog's name?

**Mr. Ely:**                Go fuck yourself! (Followed by two gun shots).

➤ Approximately 5:26 p.m.:

**Detective Peavey:**    Jeff, I can't hear you. What kind of phone do you have? (Followed by a single gunshot)

**Mr. Ely:**                Where are you (indiscernible) face? Stop harassing me.

(2) *Newport Police Officers*

Between 3:20 p.m. and 3:48 p.m., Newport Police Chief Brent Wilmot, Lieutenant Craig Roberts, Sergeant Charles McLeman, and Detective Alex Lee responded to 247 Sullivan Street to assist the Claremont Police Department.<sup>19</sup> Similar to the Claremont officers, none of the officers directly observed any of the gunfire exchanged between Mr. Ely and the SWAT team members.

The Newport officers provided additional perimeter and containment support in the initial hours of the stand-off. During their time on scene, the Newport officers heard verbal exchanges between the Claremont officers and Mr. Ely. The Newport officers also heard Mr. Ely discharge several rounds from a firearm inside his shop. Lieutenant Roberts was with the Claremont officers against the exterior wall of Mr. Ely's shop when he heard Sergeant Wade and Detective Peavey try to communicate with Mr. Ely. Lieutenant Roberts heard them tell Mr. Ely to put his gun down and that they wanted to talk with him. Lieutenant Roberts said, "At times he would speak to them for a little bit and then stop. Several times he would just yell, 'shut the fuck up,' call them more names and tell them to stop harassing him." Consistent with the reports and body-worn camera footage from Claremont officers, Lieutenant Roberts heard Mr. Ely yelling, "Where are you?" followed by a gunshot. Lieutenant Roberts could hear Mr. Ely pacing within the shop. Lieutenant Roberts wrote in his report, "For all the effort that Sergeant Wade and Detective Peavey put in trying to calm the situation and talk to Jeff and convince him they would help, he would not listen and was completely hostile."

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<sup>19</sup> Sergeant McLeman was the only Newport officer equipped with a body-worn camera.

### **E. New Hampshire State Police SWAT Team Members Who Used Lethal Force**

The troopers who used lethal force during the March 31, 2021, standoff were all members of the New Hampshire State Police SWAT team. SWAT team members respond to incidents on an as-needed basis, once the unit is formally activated by New Hampshire State Police leadership. Upon being informed that the SWAT team has been activated, SWAT team members respond immediately to incident locations, whether they are on duty in their capacity as state troopers, or off-duty. As such, SWAT team members generally arrive on scene at different times, depending on the location of the call and where they are traveling from. The SWAT team utilizes a cellphone application to communicate and share relevant information with each other prior to arriving on scene and at times during an incident. In addition, SWAT team members generally receive updated information as part of individual briefings upon arrival at the scene of an incident.

In this case, the SWAT team members who used lethal force all were informed of the situation unfolding in Claremont at approximately 3:30 p.m. on March 31, 2021. The team commander, Sergeant Ditolla, first discussed the situation with assistant team commanders TFC Larkin and TFC Cyr via text message. After deciding to request that the team be activated, Sergeant Ditolla shared information about the situation with SWAT team members via the team's cell phone application. These communications were reviewed as part of this investigation. At the same time, Sergeant Ditolla also informed members of the CNU about the incident.

SWAT and CNU team members arrived on scene at different times, at which point they were given further information about the situation. In general, all SWAT team members were informed that: (1) Mr. Ely lived at 247 Sullivan Street; (2) Mr. Ely had

barricaded himself in a portion of the building; (3) Mr. Ely had access to multiple firearms, including a rifle; and (4) Mr. Ely had discharged a firearm earlier in the day.

Due to their different response times and arrivals on scene, some SWAT team members were aware of certain details that others were not. Some SWAT team members were aware that Mr. Ely had fired at private citizens, and that he had fired while Claremont officers were positioned outside his shop. Other SWAT team members were aware only that Mr. Ely had discharged a firearm at some point earlier in the day. In addition, certain SWAT team members were aware that Mr. Ely may have been impaired by alcohol and/or drugs at the time of the incident, while other SWAT team members were not aware of this fact.

At the time of the incident, each of the SWAT team members who used lethal force wore State Police-issued camouflage tactical clothing, as well as tactical vests and helmets. Their uniforms all had patches and other markings identifying them as members of the New Hampshire State Police. At the time of the March 31, 2021, shooting, each of the SWAT team members was in compliance with their annual firearms training qualification.

The following are summaries of the interviews with Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary about the events surrounding the March 31, 2021, shooting. The troopers were separately interviewed by attorneys and an investigator from the Attorney General's Office in the presence of their respective legal counsel.

(1) *Trooper First Class Nicholas Cyr*

On April 12, 2021, members of the Office of the Attorney General interviewed TFC Cyr in the presence of his counsel. TFC Cyr has worked for the New Hampshire State Police since 2005. Prior to working for State Police, TFC Cyr served in the United States Marine Corps as a Military Police Officer for approximately four years. TFC Cyr has been a member of the New Hampshire State Police SWAT team since 2011. He is a firearms instructor and has been teaching at the New England State Police Administrator Conference (“NESPAC”) SWAT schools for approximately eight to nine years, including instructing on the use of force. TFC Cyr is also a certified bomb technician. He graduated from the NESPAC basic and advanced SWAT schools, as well as the NESPAC basic and advanced sniper schools. TFC Cyr was also trained as an active shooter instructor through Sig Sauer Academy. TFC Cyr is currently assigned as a full-time bomb technician with the New Hampshire State Police Bomb Squad. TFC Cyr has also been an Assistant SWAT Commander for approximately one year. TFC Cyr is also an explosive detection canine handler.

On March 31, 2021, TFC Cyr was off-duty, when Sergeant Ditolla called him at approximately 3:30 p.m. Sergeant Ditolla explained that the Claremont Police Department had requested the SWAT team’s assistance with Mr. Ely, who had barricaded himself and discharged a firearm. TFC Cyr arrived on scene at approximately 6:00 p.m.

Upon his arrival at the scene, TFC Cyr initially attempted to park on the driveway for 247 Sullivan Street, close to where it met Sullivan Street, but was told to park further away from the building because of the potential he could be fired upon. Trooper Cyr then parked his truck further down Sullivan Street, away from 247 Sullivan Street. TFC Cyr explained that “[Mr. Ely] had shot off the rifle earlier in the day so we didn’t want

anyone parking there because it was within eyesight of that building, if he had shot out the window it could hit whoever was just parked right there.”

TFC Cyr learned Mr. Ely had at least one rifle and two pistols. TFC Cyr also learned that well before he arrived, Mr. Ely had discharged rounds, one that struck an occupied vehicle,<sup>20</sup> and that he had fired several more rounds while police officers were talking with him. TFC Cyr also learned that CNU member Trooper Newton had called Mr. Ely earlier and that Mr. Ely told Trooper Newton something to the effect of, “Go fuck yourself,” and that further communication with Mr. Ely through text messaging and phone calls had been fruitless.

TFC Cyr met with Sergeant Ditolla and TFC Larkin at a makeshift command post that had been set up just west of the entrance to 247 Sullivan Street. They had acquired and reviewed blueprints for half of the building and were talking with the “caretaker” of the property, who TFC Cyr referred to as “Woody” (most likely Donald Woodman). Woody told them that Mr. Ely was the maintenance worker at the building at some point, so he had “keys and had full access to this entire building.” TFC Cyr learned that the SWAT team could have access to the entirety of the building with the keys that were in Woody’s office. TFC Cyr knew that two additional bomb technicians were responding to the scene and they each had robots and drones that could be inserted into a building to assess the scene and condition of a suspect while mitigating the risk to human life.

After talking with Woody, it became clear to TFC Cyr that it was not feasible to attempt using a robot or drone to access the building as the building had various pieces of equipment and “rubble everywhere.” Woody told him that there were all “kinds of

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<sup>20</sup> While TFC Cyr believed the vehicle Mr. Ely shot was occupied, the vehicle was in fact empty when Mr. Ely shot it.

overhanging wires inside,” the “building was lined out with chicken wire for rooms basically, doors, and then had plastic sheeting up inside” serving as walls.

In showing TFC Cyr the location of Mr. Ely’s shop, Woody explained that he suspected that Mr. Ely was living there. He also said that Mr. Ely used methamphetamine and drank a lot of Bud Light beers. Woody told TFC Cyr about Mr. Ely doing donuts around the building in his vehicle and the building owner asking him to go talk to Mr. Ely. Woody told Mr. Ely that he could not be driving like that. Woody told TFC Cyr that Mr. Ely became “irate” and said that he was going to “fucking kill everybody,” that he had guns and “was gonna kill everyone.” Woody told TFC Cyr that he then left because Mr. Ely “was so irate and not acting normal.”

According to TFC Cyr, an outline of the building, a photograph of Mr. Ely, and a photograph of the exterior of Mr. Ely’s shop—which captured the Claremont officers still in position outside of the shop—were distributed to the SWAT team members before they began replacing the Claremont and Newport officers on the perimeter. TFC Cyr was concerned about Mr. Ely’s location and containing him within the expansive building, and the need for more perimeter officers to fully secure the building. TFC Cyr told investigators that “containment, isolation and, then apprehension” was the ultimate goal in resolving this incident, given Mr. Ely’s full access to the building.

TFC Cyr was also concerned about Mr. Ely discharging rifle rounds because those rounds “travel a great distance.” TFC Cyr said:

I know from my . . . education, training education, experience rifle rounds travel a great distance. I’ve been to Claremont before for a SWAT call where the individual was shooting off a lot of rounds, multiple, 100 rounds plus and we found out later bullets were hitting a mile away. So . . . I know from my time in the service and being on this job for 16 years that bullets travel great distances.

TFC Cyr knew that there were houses in the immediate area that would be in danger from any gunfire from Mr. Ely.

As members of the SWAT team evacuated the Claremont and Newport officers from their positions near Mr. Ely's shop using the Bear, TFC Cyr noticed that the lights in Mr. Ely's shop were turned off and he could not hear anything coming from the shop. TFC Cyr said that the SWAT team members who remained inside the Bear after the Claremont and Newport officers were evacuated consisted of the driver, Trooper Daniel Livingstone and Sergeant Ditolla in the front passenger's seat, with TFC Matthew Partington, Sergeant Gary Ingham and his canine named Grunt, Sergeant Christopher Ladd, TFC Stefan Czyzowski, and TFC Cyr seated in the back. Once the Bear returned to the doorway to Mr. Ely's shop, the SWAT team decided they needed to move Mr. Ely's SUV, which was parked in front of his door. The SWAT team used the Bear and a tow strap to pull Mr. Ely's SUV away from the building so that he could not use it to flee and so that it would not be in the way of monitoring and ultimately apprehending Mr. Ely.

After towing Mr. Ely's SUV, TFC Cyr remained with the SWAT team as they drove the Bear back to Mr. Ely's shop and Trooper Rae of the CNU began using the LRAD to attempt to communicate with Mr. Ely.<sup>21</sup> TFC Cyr heard Trooper Rae identify the team as "New Hampshire State Police" and repeatedly ask Mr. Ely to come out of the residence, to flick the lights so they knew he was ok, and to answer his phone.

TFC Cyr estimated that after approximately 20 to 30 minutes of Mr. Ely not responding to any of Trooper Rae's statements, he told Sergeant Ditolla that they needed

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<sup>21</sup> To illustrate the volume of the LRAD, Trooper Cyr reported that law enforcement officers at the command post, which was over 300 yards from Mr. Ely's shop, told him they were able to hear Trooper Rae talking over the LRAD.

to determine where Mr. Ely was in the building. He told investigators that the team wanted to open the door so they could see into the building, and communicate with Mr. Ely, although Mr. Ely had not responded to them and they were not sure of his exact location in the building. The team used a ram affixed to the front of the Bear to force Mr. Ely's front door partially open. When the door was about halfway open, Mr. Ely shot at the Bear. TFC Cyr explained:

I [could] hear loud gunfire hitting, coming from outside and I can hear it hitting the truck. It's, it's extremely loud. I looked forward and I see sparks flying off the front of the truck and I can see [Mr. Ely] standing there with a rifle like somewhat up at his shoulder, like holding it at, facing, pointing at the truck, firing the gun. I can see the muzzle flash and you can see sparks hitting the truck . . . .

TFC Cyr estimated that Mr. Ely shot ten rounds at them. He said it seemed like accurate, nonsporadic, gunfire that was directed toward the front of the Bear.

In response to Mr. Ely's gunshots, the SWAT team backed the Bear away from Mr. Ely. As they backed up, TFC Cyr heard Trooper Rae use the LRAD to tell Mr. Ely repeatedly by name "to put the weapon down, put the weapon down, put the weapon down." After waiting approximately five minutes, the SWAT team pulled the Bear back into position. TFC Cyr said that while repositioning the Bear, they continuously announced that they were "State Police," and told Mr. Ely that he needed to come out, put down the gun, and that he would not be hurt. At the same time, TFC Cyr could see Mr. Ely inside of the shop pointing an "AR-style" gun at them. The gun had a 30-round magazine in it and an optic on it.<sup>22</sup>

After the Bear was repositioned directly in front of the door, TFC Cyr could not see into the shop. However, he could hear others in the Bear announcing Mr. Ely's

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<sup>22</sup> The reference to an "optic" means a scope used to see targets at a distance.

movements and actions. He heard them report that Mr. Ely was walking back and forth and was continuing to point a gun at them. At one point, Mr. Ely remained out of view for approximately 10 to 15 minutes. TFC Cyr told investigators why this concerned him:

[I]f he's left, he can get on the roof, he can start shooting his firearm off so we have, you know, other troopers, law enforcement, fire department, medical, all around here. And we have just people that live there so he gets on the roof or shooting out the window, we need to figure out where he is for protection of them as well as protection of ourselves.

Based upon those concerns, TFC Cyr, Sergeant Ditolla, and TFC Larkin decided that they needed to fully open the front door. TFC Cyr asked Trooper Rae to announce to Mr. Ely that they were going to open the door, that they were not there to hurt him, but they needed to make sure that he was not hurt. As they moved the Bear forward to open the door, TFC Cyr heard Trooper Rae continually relaying those messages to Mr. Ely on the LRAD, asking him not to shoot at them.

The door to Mr. Ely's shop was a right-hand in-swing door. TFC Cyr saw that there were tires stacked up behind the door. As the SWAT team used the vehicle mounted ram to push the door fully open with the ram, the door was pushed up and over the tires, coming to rest to the right side of the entryway, leaving the door approximately three-quarters opened. Based upon how the door came to rest, "the door [was] hiding the entranceway more towards the bottom than the top."

TFC Cyr could now see Mr. Ely again, who was walking back and forth in the shop, moving around and pointing a gun at them. He could see Mr. Ely bring the gun up toward his shoulder and level it so the barrel was aimed toward the Bear. According to TFC Cyr, "if he shot it would have hit the truck the way he was pointing it." TFC Cyr could also see that Mr. Ely was walking around with the gun facing upward at an approximately 45 degree angle, at a "high port." TFC Cyr stated that the SWAT team

could not hear Mr. Ely, but he was acting irregular. “[H]e was yelling, screaming and just acting very erratic, walking back and [forth], just like his body mannerisms, it was just odd how he was acting.” At the same time, Trooper Rae was continuing to try to communicate with Mr. Ely.

TFC Cyr knew that Troopers Sanctuary and Neilsen were positioned on the hillside between the building and Sullivan Street, in their roles as the marksman observer and spotter, respectively. TFC Cyr stated that Trooper Sanctuary asked the team to move the Bear so that he and Trooper Neilsen could see into Mr. Ely’s shop better. As the SWAT team repositioned the Bear to provide Troopers Sanctuary and Neilsen a better view into the shop, TFC Cyr saw Mr. Ely walk “kind of aggressively towards the door,” still holding the gun in his hand. TFC Cyr started to open the rear of the truck in the event Mr. Ely came out, attempted to flee, or if he placed the gun down and surrendered. TFC Cyr explained to investigators how this action was in furtherance of his duties: “[T]hat’s our role in that truck, is when people give up, we take them into custody.” Mr. Ely did not come out, but went back into the room, where he continued to walk back and forth.

After a short period of time, TFC Cyr heard Sergeant Ditolla and Trooper Livingstone say that Mr. Ely was putting on a jacket. TFC Cyr believed that this meant Mr. Ely was going to exit the building to either surrender, run, or fight. After putting on his jacket, Mr. Ely walked toward the door. TFC Cyr was positioned in the back of the truck, with his hand on the door latch. He watched as Mr. Ely continued “walking towards that open door.” At this point, TFC Cyr heard Trooper Rae continuously call out, “Jeff, drop the firearm, drop the firearm.” TFC Cyr could hear her voice changing as Mr. Ely continued walking toward the door, and TFC Cyr stated that Mr. Ely was not

dropping the gun, but held the rifle on his right arm down toward his side, at an almost 45 degree angle. TFC Cyr reported that Trooper Rae was “continuously telling him, ‘[D]rop the gun, drop the gun and, . . . drop the gun, Jeff, please put the firearm down. Please drop the gun.’”

TFC Cyr saw Mr. Ely walk closer and closer to the door. He explained that the team held off on immediately leaving the Bear because Mr. Ely was a threat from his position in the shop:

[O]nce we open [the Bear] door we’re exposing ourselves to [Mr. Ely] and he is a, I know from my training, education and experience that a person with a weapon is an imminent threat. He has his firearm. He used it earlier. He used it when we opened his door. He’d shot the truck. And he is being non-compliant by not listening to [Trooper] Rae’s commands of “drop the firearm.” He knows that we’re the police because he can see the truck. We’ve been loud hailing him. He knows the police were there earlier speaking with him that I now know. And he’s walking towards the door. I had been looking at the door. I could see he had two barriers that he was gonna have to get through before he could get out, and my fear was if he did get out he could start shooting the firearm off. There’s houses all around with people inside or he could take off running. So we were gonna have to then intervene to keep him from doing so. The marksman observer couldn’t see him at that point so I, I could hear it go over the radio does anyone else see him. He kept walking.

TFC Cyr further believed that Mr. Ely was definitely going to use force if he reached his front door. When Mr. Ely closed to approximately three yards from the doorway, TFC Cyr directed the SWAT team out of the truck. TFC Cyr explained that their job at that point was to take Mr. Ely into custody peacefully if he dropped the firearm, or to use force to protect themselves and the other team members if Mr. Ely raised his rifle, shot his rifle, or did not comply with the team’s commands.

TFC Cyr explained that Mr. Ely posed a greater threat the further inside the room he was positioned, because he had more angles to see the team. He stated:

I did not want to expose any of us to him 'cause I know all he -- if he starts shooting bullets can come out and . . . he doesn't have to be accurate, he just has to be lucky. And I know this from my experience being involved in the Greenland shooting and, and [Chief Maloney] was shot and I know that the suspect just shot through the window and one of the rounds found its way out and so that's why I also wanted him to be closer to that [doorway] and that makes it safer for us. It cuts his ability to . . . have an angle on us but as well as us to see more of him.

After getting out of the Bear, TFC Cyr and TFC Czyzowski positioned themselves on the driver's side of the Bear, while Sergeant Ingham and TFC Larkin positioned themselves on the passenger side of the Bear. TFC Cyr estimated that there were approximately 25 yards between the door to Mr. Ely's shop and the back of the Bear. TFC Cyr explained that he was providing "cover" for TFC Czyzowski. TFC Cyr believed TFC Czyzowski was in the safest position to engage Mr. Ely if they had to engage him, based on TFC Czyzowski's angle toward the doorway.

TFC Cyr explained that from his vantage point on the driver's side of the Bear, he could see "Mr. Ely's left arm and probably about half his torso," so that half his body was in view. TFC Cyr instantly recognized that he was in a very exposed position, but was able to observe farther into the shop as a result of it.

When TFC Cyr last observed Mr. Ely walking, he was holding the firearm on his right side. Because Mr. Ely was positioned on TFC Cyr's left, TFC Cyr could not see the firearm anymore. When TFC Cyr was approximately three to four feet to TFC Czyzowski's left, he could see Sergeant Ingham on the opposite side of the Bear. He noticed Sergeant Ingham was moving out, further away from the Bear, which he believed was so Sergeant Ingham could see Mr. Ely more clearly. TFC Cyr said:

This entire time . . . the negotiator is loud hailing him and I can hear her still, you know, "Please drop . . . the firearm," "Please drop the weapon," "Please drop the gun." She's using terminology back and forth and I can, it's -- it's just constant. She is constantly loud hailing him. As I look I see

Sergeant Ingham, he -- and this is within seconds, this is all happening. It's, it's not a five-minute timeframe, it's within seconds. I see him kind of take a side step right, a side step right and as soon as he takes that second side step right, I can see his cheek kind of drop down onto the butt stock of his rifle. I then start scanning back and as I do, I can see [Mr. Ely] is now in the doorway almost square in front of it and the firearm's down at like an angle still.

TFC Cyr said that Mr. Ely was holding the firearm in one hand at a "low-ready" type position down by his side. Mr. Ely was holding the firearm's pistol grip and "it was down where you could just pick it up and start shooting." When TFC Cyr saw Sergeant Ingham's cheek move to the buttstock of his rifle, he knew Sergeant Ingham was going to shoot Mr. Ely. TFC Cyr immediately looked back and saw that Mr. Ely was now in the doorway. He then heard Sergeant Ingham discharge his rifle.

TFC Cyr believed that Mr. Ely was struck because of "his mannerisms." He saw Mr. Ely start turning and the rifle "started coming on so he was bringing the rifle up." Within "milliseconds," he heard TFC Czyzowski "start engaging [Mr. Ely] and the rifle was coming up so I started engaging as well." TFC Cyr said that he aimed at "the center of [Mr. Ely's] chest" and fired "four to five rounds very quickly into his torso area." TFC Cyr said that as he shot, Mr. Ely continued turning and moving the rifle upwards. TFC Cyr described:

He's still standing. I can still see the rifle is still in his hand, still coming upwards it appears. And it's almost like he's, there's no effect of these rounds hitting him. He's turning clockwise at this point so if he was square in the doorway he is now turning clockwise like so he's turning right to left, just turning.

TFC Cyr could still see the firearm in Mr. Ely's hand as he turned towards him and TFC Cyr fired two to three "quick rounds into his head area and he's still holding [the gun] and he's still turning." TFC Cyr said he aimed at Mr. Ely's head to incapacitate him and get him to drop the gun, as it appeared to TFC Cyr that the earlier rounds were still

having “no effect.” TFC Cyr could hear TFC Czyzowski and Sergeant Ingham still shooting. Mr. Ely was still turning so TFC Cyr fired one more round. TFC Cyr said that he saw Mr. Ely’s head go backwards, then forward, and then Mr. Ely slouched down behind the door. TFC Cyr estimated that the entire period of his shooting, from his first shot to his final shot, happened within seconds or milliseconds.

After Mr. Ely fell behind the door, his head was slightly tilted forward, somewhat slouched forward and the hood of his sweatshirt was blocking his face. TFC Cyr described that Mr. Ely was “still holding that rifle up until my last round that I could see” and “never just dropped the firearm.” Based upon his experience in the military and law enforcement, TFC Cyr was aware that people who have been shot may “continue to fire as long as they have the firearm.” TFC Cyr said that Mr. Ely was non-compliant and was still coming forward at the time that the shooting began. TFC Cyr did not know what Mr. Ely’s intentions were, but he was concerned that Mr. Ely had shot at them and others earlier. Accordingly, TFC Cyr believed that Mr. Ely’s possession of the rifle while coming out of the shop, and then his act of pointing the gun up at the troopers, required his use of force against Mr. Ely. He said, “[S]o, him holding that firearm coming out, I used force, as the other troopers, especially when the gun was coming up, to stop him from using force against us.”

After shooting, TFC Cyr turned on his firearm’s safety, but kept the flashlight attached to his rifle illuminated. TFC Cyr then heard additional shots from his right. He estimated there were two to four additional shots that were loud. When TFC Cyr first heard the shots, he started looking at Mr. Ely again because he thought the gunshots were coming from him. He then realized they were coming from his right. TFC Cyr estimated

that he heard these shots approximately five seconds after the first volley of gunfire. He said that “it was just a slight delay after ours.” TFC Cyr explained that he was “kind of looking back towards where [TFC] Czyzowski was, just doing a visual check.” TFC Cyr said that he did not hear the marksman, Troopers Neilsen and Sanctuary, discharge their weapons during the entirety of the event.<sup>23</sup>

After hearing the final shots, TFC Cyr yelled, “Cease fire. Cease fire.” TFC Larkin yelled that Mr. Ely was “still moving, grabbing something.” TFC Cyr said that TFC Larkin thought Mr. Ely was reaching for something. TFC Cyr did not see if TFC Larkin’s bullets struck Mr. Ely. TFC Cyr could not see Mr. Ely’s hands from his vantage point because Mr. Ely had fallen behind a “barrier” (the door). TFC Cyr was only able to see a portion of Mr. Ely’s face. At that point, TFC Cyr directed the SWAT team members to move back to the truck. TFC Cyr also checked the status of the SWAT team members over the radio to ensure everyone was safe.

Once the team regrouped in the Bear, the SWAT team used a remote controlled robot to check on Mr. Ely. With the robot, the team was able to see that Mr. Ely’s rifle was down by his feet, but they were unable to see his hands. At that point, the SWAT team prepared to enter the shop to check Mr. Ely’s condition. After TFC Cyr ensured that there were no improvised explosives or booby traps, the SWAT team entered the shop. TFC Cyr saw Mr. Ely’s rifle at his feet and his safety switch was in the “fire” position. Mr. Ely’s left hand was grasping a tubular structure, “like . . . he was squeezing it.” TFC Cyr said, “[I]t looked white knuckled, which was very odd to do that.”

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<sup>23</sup> Both Trooper Sanctuary and Trooper Neilsen did in fact discharge their weapons, as detailed below.

Sergeant Ladd, the SWAT team medic, entered the shop with the other team members. Sergeant Ladd reported to Sergeant Ditolla that Mr. Ely was dead. Because Mr. Ely was dead, the SWAT team members “left everything as [it was]. He was not touched again.” TFC Cyr observed this and then participated in a search of the shop to ensure it was safe.

While ensuring that the shop was safe, TFC Cyr saw multiple ammunition containers; boxes of military food rations; and loaded ammunition magazines “staged”<sup>24</sup> throughout the space. TFC Cyr saw another “AR-style rifle” on a back table that appeared to be chambered in a pistol caliber. It seemed as though the rifle was “staged” in the back. He also saw a large wooden door in the back of the space that was “barricaded pretty heavily” with a “thick webbing ratchet strap.” Finally, TFC Cyr noted that it appeared Mr. Ely had tried to barricade the front door with tires.

(2) *Trooper First Class Stefan Czyzowski*

On April 15, 2021, members of the Office of the Attorney General interviewed TFC Czyzowski in the presence of his counsel. At the time of the incident, TFC Czyzowski was assigned to the State Police Mobile Enforcement Team. TFC Czyzowski has worked for the New Hampshire State Police since 2006, and has been a member of the New Hampshire State Police SWAT team since 2011. TFC Czyzowski is an instructor in less-lethal munitions and distraction devices. He has been recertified on a regular three-year basis three times, and is the instructor for the SWAT team. Based on his role as the less-lethal instructor, he carries a 40 millimeter less-lethal shotgun that

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<sup>24</sup> To “stage” weapons or supplies means to prepare them for later use by placing them in specific positions or locations.

fires bean-bag like ammunition. TFC Czyzowski was a member of the United States Coast Guard from 2005 until 2013.

On March 31, 2021, TFC Czyzowski arrived home from his regular duty-shift at about 3:00 p.m. At approximately 3:30 p.m., he started receiving text messages from Sergeant Ditolla, The text messages said that a man, Mr. Ely, was barricaded in Claremont, that shots had been fired, and that further information would be forthcoming. At approximately 4:00 p.m., TFC Czyzowski received notification that the SWAT team was being activated. He changed into his uniform and drove to Claremont.

TFC Czyzowski arrived in Claremont at approximately 5:30 p.m. As he traveled, he received additional updates from SWAT team members who were already on scene. TFC Czyzowski also received a phone call from Trooper Newton, who had already arrived on scene. Trooper Newton told TFC Czyzowski that Mr. Ely was still barricaded, and was “still actively shooting.” A few minutes after TFC Czyzowski arrived, Trooper Newton told him that Mr. Ely had recently stopped firing.

For approximately the next hour and a half, TFC Czyzowski remained in a staging area directing other SWAT team members upon arrival. During this time, TFC Czyzowski did not hear any shots fired. He was standing next to Trooper Newton, who was attempting to contact Mr. Ely by calling his cell phone. He heard Mr. Ely screaming at Trooper Newton before he hung up the phone.

TFC Czyzowski learned that Mr. Ely was making Facebook posts and videos. Trooper Newton played one of the videos for TFC Czyzowski. Mr. Ely appeared to be in a dark room, and “was just ranting, screaming.” TFC Czyzowski recalled that it “[s]ounded like he was talking to somebody but the information [the SWAT team] had

was that there was nobody in the building at the time.” TFC Czyzowski stated that “as far as the negotiations, there was no real negotiating. It . . . was him going on rants.”

TFC Czyzowski learned that the building at 247 Sullivan Street was a very large industrial building, and that Mr. Ely had converted a garage in the building into a shop. TFC Czyzowski also learned that a man he believed was the property manager told police that Mr. Ely “had made threats to him that day and was really going off the . . . deep end,” and that Mr. Ely “had a lot of guns with him and he had rifles, he had pistols, he had a lot of ammo.” TFC Czyzowski realized that “this could have resulted in a workplace shooting, this could have resulted in an active shooter before everyone . . . dispersed.”

When the property manager told the team members that the layout of the building was open, with walls made of chicken wire and plastic, TFC Czyzowski gathered that there was no cover inside the building. The property manager’s description of all the industrial equipment in the building made TFC Czyzowski believe it would not be possible to use a robot to get to Mr. Ely’s location. TFC Czyzowski stated that Mr. Ely “basically had free reign throughout that entire building. So everywhere around that building was a danger zone.”

TFC Czyzowski was in the Bear with two or three other troopers as they drove around the building and evacuated the Claremont and Newport officers who were still positioned outside the building. As the Bear circled the building, the SWAT team members saw open doors and numerous vehicles parked around the building. The SWAT team members checked each vehicle to see if there were keys in the ignition. The SWAT team members also checked the vehicles and identified various exit points because they were concerned about the danger Mr. Ely posed if he fled the building.

According to TFC Czyzowski, “[T]he danger of him exiting the building is the fact we’re surrounded by neighborhoods . . . there are just dozens of doors, windows, and exit points, if he got into the river he could be gone. He’s already fired shots. He’s already . . . not negotiating.” TFC Czyzowski also said, “[W]e had been told that he is a drug user, methamphetamines.” TFC Czyzowski stated that amount of perimeter troopers was “very light” because of the shape of the building. He said, “[T]he way the building is shaped it’s very difficult to contain.” He told investigators that:

[W]ith SWAT activations . . . containment is primary. Before you do anything else, if you don’t have containment, you have nothing. So if the subject gets out and flees the area, now you have to worry about third parties. Now is he gonna get to a neighborhood? Is there gonna be a school? Are there other people around, perimeter units, local units? Now you have a danger to all of them, especially [Mr. Ely] that has firearms to include assault rifles and from what we were told a lot of ammo.

After the Bear picked up the Claremont and Newport officers and took them to the command post, CNU team members Troopers Newton and Rae, and SWAT team members including TFC Cyr, TFC Larkin, and Sergeant Ingham got into the Bear. TFC Czyzowski was present when the team affixed the ram to the front of the Bear, drove to the front of Mr. Ely’s shop, used the Bear to tow Mr. Ely’s SUV, and attempted to call Mr. Ely’s phone. TFC Czyzowski did not believe there was any new information from Mr. Ely as his phone was turned off and negotiators were constantly checking Mr. Ely’s Facebook account for updates.

TFC Czyzowski estimated that the Bear was parked approximately 15 to 20 yards from Mr. Ely’s door when Trooper Rae used the LRAD system and told Mr. Ely that they were the State Police. She said, “We’re here to help you, we’re not here to hurt you. We just want to talk to you, answer your phone, call us. Give us some indication of where you are.” He estimated that Trooper Rae repeated these commands over and over, for

approximately 30 to 45 minutes. During this time, TFC Czyzowski said that he and TFC Cyr were “were constantly out the windows looking, scanning, using night vision to try to see, is he gonna flank the truck? Is he gonna come up behind us?” The troopers were concerned that Mr. Ely might exit the building where they could not see him and attack the Bear from behind.

With no response to the CNU efforts, the SWAT team members decided to use the ram to open Mr. Ely’s door as it was getting dark out. They hoped that they would be able to see into Mr. Ely’s shop and potentially send in the robot. TFC Czyzowski stated that this was typically done in situations where there was no communication with someone who is barricaded, in order to see if the person is still alive. The SWAT team members then slowly drove the Bear forward and used the ram to push Mr. Ely’s door open.

TFC Czyzowski said, “[I]mmediately upon [the door] opening up, it was gunfire directed at us” from inside the shop. “You could see sparks bouncing off the front of the Bear. It was 10 to 15 rounds of what I immediately recognized as rifle fire. And it was directed directly at us.” The team backed the Bear up about 15 to 20 yards and stopped.<sup>25</sup> In describing why the SWAT team was concerned about the gunfire even though they were in an armored vehicle, TFC Czyzowski explained:

It’s one of those things that it’s an armored vehicle and it’s designed for it but you don’t want to abuse it, especially if all of a sudden he continues to fire and the windshield now gets hit. Bulletproof glass, whether it’s bulletproof or not is going to shatter inside and that’s what it’s designed, it’s just designed . . . to hold together. So we have our Bear driver and we have [Sergeant Ditolla] sitting in the front seat. If that glass starts getting hit, they’re at, at risk of, of getting glass in their face . . . .

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<sup>25</sup> TFC Czyzowski stated that the team did not want to back up out of view because it would allow Mr. Ely access to the neighborhood and the SWAT team members on the perimeter in the area.

TFC Czyzowski was specifically aware of an incident where a Maine State Trooper had glass impact his face from a bullet fired into bulletproof glass.

TFC Czyzowski stated that the Bear remained in that position for approximately 30 to 40 minutes. After the initial 10 to 15 rounds, there was no more gunfire. During that time, Trooper Rae continued to tell Mr. Ely, “Jeffrey, this is the State Police. We’re not here to hurt you. We’re here to help you.” TFC Czyzowski estimated that the door of Mr. Ely’s shop was only partially open, and they had only “a little more than 50% view of inside.” TFC Czyzowski added, “We had information that [Mr. Ely] . . . had some mental health issues in terms of he thought the vehicles and machines were out to get him.” Mr. Ely gave no indication of complying with any of the requests made by the negotiators.

At that point, the SWAT team members decided to remove the door completely, as the team still did not know if Mr. Ely had disappeared into the building after firing at them. TFC Czyzowski said, “[S]o that was still a fear of, ‘okay, he just shot at us. We can sit here outside his [shop] and do nothing and now he’s gonna sneak up behind us, now he’s gonna sneak out a window. Now he’s gonna go into the nearby neighborhood. Now he’s gonna shoot at perimeter units on the other side.’”

The SWAT team members used the Bear to push in the door of Mr. Ely’s shop again. Before the door was pushed in, TFC Czyzowski heard the negotiators tell Mr. Ely what they were going to do, saying, “[H]ey, Jeffrey, this is the State Police. We’re gonna open this door, don’t shoot at us. We’re here to help you. This is what we’re gonna do.” TFC Czyzowski stated that normally the State Police do not provide such information in advance, but did so in this case “because of the thought that [Mr. Ely] thought the

machines were out to get him.” There was no shooting after the Bear pushed the door open.

The ram pushed the door inward and to the right, at about a 45 degree angle. There was no shooting after they pushed the door open. This opening gave the SWAT team members an about 80 to 85 percent view into the building. Initially they could not see Mr. Ely. They could see that the room behind the door was like an auto garage, with debris everywhere and tires in front of the doorway. TFC Czyzowski said that “[i]t looked like [Mr. Ely] had intentionally put [the tires] there to blockade the door because there was no way that door was opening . . . until those tires were moved.”

Once the door was fully opened, TFC Czyzowski “started seeing [Mr. Ely] and he was moving around clear as day within the room . . . you would see pieces of him...[h]e would poke his head out around a corner of one of the shelving units.” TFC Czyzowski stated that there “was an old wall that [Mr. Ely] had set up that he was standing behind. Clear as day you could see the gun, he had a black AR-style rifle with a 30 round magazine and it had an optic on the rifle.”

After they had pushed Mr. Ely’s door open, they backed the Bear up approximately 10 yards from his door. TFC Czyzowski described what he saw:

[Y]ou could see inside the room and you could see him moving around. He’s pointing the gun at us multiple times. He’s screaming, then he’s disappearing so we don’t know, is he going to a different part of the room to get more guns. Is he now getting to those doors that open up to the rest of the building. We don’t know but repeatedly he would come back and, just show himself. He would hold the gun at a high port position. He would point it at us. He would hold it down at his side. At one point [Sergeant Ditolla] had called out where he thought it was a second gun in his left hand. He was holding the rifle in his right hand but he said it looks like there’s a silver object or something wrapped around his left hand. Didn’t know if that meant he had been hurt or if he was holding another

gun but it was either he had a gun in his left hand or something was in his left hand.

TFC Czyzowski stated that during this time, Mr. Ely appeared “very angry” and that he would point his rifle at the SWAT team members. TFC Czyzowski observed Mr. Ely yelling at them, but he could not make out what Mr. Ely was saying because of the noise from the Bear’s engine.

TFC Czyzowski stated that there was a sense of urgency at this point because if Mr. Ely came out the front door and flanked the Bear, the troopers inside would not have enough time to react. TFC Czyzowski also stated that if Mr. Ely “came out and went toward his right and went around the building and ran towards the command post it would have been too quick for us to get out of the Bear and then deal with it.” TFC Czyzowski said that it was a “much more dangerous situation” after it was dark out, and the SWAT team members were aware that “[t]here were civilians in that immediate area.” He also knew that the SWAT marksmen were also unable to see Mr. Ely because of their position on the hillside. At one point, Mr. Ely put a jacket on. This suggested to TFC Czyzowski that Mr. Ely was preparing to leave the shop.

According to TFC Czyzowski, when the SWAT team initially gained a view of Mr. Ely moving within the room, “he was deep within the room.” TFC Czyzowski stated that from that point,

Throughout this time it was probably 15, 20 minutes of him moving closer to the door so that’s when, when we talk about urgency, it was you could see that he’s getting closer to that front door and our concern was that he’s trying to get out. He’s looking for his avenue of escape because of the way he was looking. Yes, he was pointing the gun at us. Yes, he was pointing the rifle. He was screaming but he was also peering around corners.

TFC Czyzowski further elaborated that:

[Y]ou can see him multiple times peering around and now...it was really like okay, he's...trying to get out. He's trying to either escape from this room or he's trying to see where we are and there's not a doubt in my mind that if he saw us standing outside there that he was gonna start shooting at us again. That in my mind just by looking at him through the windshield what his mannerisms were, what he was doing, he's looking for us. He's looking for us next target. He's looking for that avenue of escape. If he escapes that neighborhood's right there and the timeframe of us getting out of the truck and deal with him is gonna be very, very small.

As Mr. Ely walked closer and closer to the door, it was decided that SWAT team members would have to leave the Bear and set up in a position to confront Mr. Ely if he came out. If the SWAT members waited to open the Bear's doors, which TFC Czyzowski described as "two big heavy doors," until Mr. Ely exited the building, it would have only been a "matter of seconds before [Mr. Ely] either flanked the Bear or disappeared in the woods."

When the SWAT team members exited the Bear, TFC Czyzowski positioned himself near the rear of the Bear on the driver's side, facing the shop door. TFC Cyr was to his left, and TFC Larkin and Sergeant Ingham were on the passenger side of the Bear. Because Mr. Ely had already fired at the SWAT team, and had not complied with repeated requests to put down his gun, TFC Czyzowski did not arm himself with his less-lethal weapon, and instead carried his standard issue rifle.

During this time, CNU team members continued to ask Mr. Ely to put down the gun, informing him again that they were the State Police, and they were there to help him. TFC Czyzowski described the CNU's efforts as "constant." As TFC Czyzowski rounded the Bear, he saw Mr. Ely's left shoulder in the left side of the doorway. As Mr. Ely moved into full view in the doorway, TFC Czyzowski saw that Mr. Ely "had the rifle down by his side and it was clear that it was in his right hand, down by his right leg."

CNU team members continued to call out “[D]rop the gun, drop the gun, drop the gun. You don’t want to do this. We’re here to help you.”

TFC Czyzowski had been trained in “action versus reaction,” and was certified to teach law enforcement officers how to respond to active shooter situations. Based on his training, TFC Czyzowski knew that the average reaction time for the average person was one and a half seconds. Based upon that delay, “the police officer is always gonna lose” when trying to react to an active shooter. Referencing his training and experiencing, TFC Czyzowski said:

I know that a person holding a gun down by their side is just as deadly to me as pointing that gun directly at me because no matter what, even if I can be the very quickest on the team, it’s a split second for him to raise that gun and squeeze off a round before I can process it and react.

So when he presented himself in front of that door and he had that gun down by his side, in my mind the decision was he has already engaged law enforcement. He has already fired at us. He’s already shot the Bear...He has given absolutely zero indication that he was going to give up. He has not responded to any of the negotiations. He has not complied with any of the commands, any of the orders of drop the gun, drop the gun, drop the gun, we’re here to help you. There was absolutely no indication that he was going to surrender whatsoever. He had already engaged us. There’s a neighborhood around us with civilians. I have my teammates around me. I have snipers right in that general area to my left that are in danger. That there’s no way that I was going to allow him the opportunity to raise that gun and start firing at us. The fear of myself and my teammates and the neighborhood around. So at that point my decision was lethal force is my only option. I felt that I was justified of the imminent threat and the imminent danger he was presenting based on what he had already done up until that.

Believing that deadly force was about to be used against himself and other members of the SWAT team, TFC Czyzowski took his rifle off safe and squeezed the trigger. As he was squeezing his first round, he heard gunfire to his right, but did not know if it was Sergeant Ingham or TFC Larkin. TFC Czyzowski aimed at Mr. Ely’s chest and fired his first round. TFC Czyzowski told investigators he saw his round hit Mr. Ely

in the chest. TFC Czyzowski shot two to three more rounds as Mr. Ely moved across the doorway to TFC Czyzowski's right. As Mr. Ely moved, TFC Czyzowski saw him raise the gun up from his side, describing the angle of the gun in Mr. Ely's hands as about a 45 degree angle, and stated that the gun "never made it past his waistline."

As Mr. Ely was actively still moving and raising the gun, TFC Czyzowski aimed at Mr. Ely's head and squeezed one final round. When he did that, he saw Mr. Ely's head and body drop, as if in slow motion, "into a seated position and his head kind of jolt[ed] in a downward motion." At that point, TFC Czyzowski stopped firing. He heard someone yell "cease fire," but was not sure who it was.

After the cease fire call, TFC Czyzowski looked to his right to see where everyone else was. He then "heard somebody else yell out, '[H]e's still moving,' and there was another volley of maybe four rounds." When TFC Czyzowski looked back, Mr. Ely was now "completely slumped over," and TFC Czyzowski could see his left shoulder and back area, but not his head. Most of Mr. Ely's body was blocked from view by the pushed in shop door.

TFC Czyzowski estimated that the pause between when he stopped firing and when he heard the final four shots fired was "a half a second to a second," and no more than one second.

After the shooting, TFC Czyzowski and the other SWAT team members got back into the Bear and ensured none of the SWAT team were injured. The SWAT team then used the remote control robot to determine whether or not Mr. Ely was still alive. After seeing that Mr. Ely appeared dead with the robot, the SWAT team members entered the

shop with Sergeant Ladd, the SWAT medic. Sergeant Ladd evaluated Mr. Ely and determined he did not have a pulse.

When he approached the door, TFC Czyzowski could see Mr. Ely hunched over in a sitting position, with a rifle down between his legs. TFC Czyzowski described the rifle as a black AR-style rifle. TFC Czyzowski recalled TFC Cyr pointing out that Mr. Ely's rifle was still in the "fire" position.

Mr. Ely's shop had a bedroom area and a closet. Otherwise, it was an open automotive garage type area. TFC Czyzowski saw multiple firearms and loaded magazines, and it appeared to TFC Czyzowski "as if [Mr. Ely] was staging himself" as if to barricade himself inside with firearms. The doors that led into the rest of the building were barricaded with metal pipes, and there was "an AR pistol-style weapon" and magazines periodically placed in his closet and bedroom area. Inside the closet, TFC Czyzowski saw large aluminum cans that contained what he estimated as 1,000 to 2,000 rounds of ammunition.

After clearing the shop, TFC Czyzowski and the other SWAT team members secured their weapons and proceeded to the Claremont Police Department to meet with investigators.

(3) *Sergeant Gary Ingham*

On April 8, 2021, members of the Office of the Attorney General interviewed Sergeant Ingham in the presence of his counsel. Sergeant Ingham has worked for the New Hampshire State Police since 2003. Prior to working for State Police, Sergeant Ingham served in the United States Marine Corps for approximately four and a half years. Sergeant Ingham has been on the New Hampshire State Police SWAT team since 2011. He graduated from both the basic and advanced SWAT schools. Sergeant Ingham has

been trained in drug interdiction, specifically utilizing a narcotic detection dog. Sergeant Ingham is currently assigned as the New Hampshire State Police Canine Unit Commander. In addition to serving a general member of the SWAT team, he is assigned as a Canine Unit tactical member.

Sergeant Ingham detailed similar information to the other SWAT team members leading up to the SWAT team positioning the Bear in front of Mr. Ely's door. Accordingly, this summary of Sergeant Ingham's interview is focused on the events immediately preceding and surrounding the SWAT team members' uses of deadly force.

After pulling Mr. Ely's SUV out of the way, the SWAT team members positioned the Bear in front of the entrance to Mr. Ely's shop. Sergeant Ingham estimated that the front of the ram was approximately 10 to 15 feet from Mr. Ely's door. From that position, the SWAT team pointed the LRAD directly at Mr. Ely's shop. Sergeant Ingham said that they were "looking for a peaceful resolution in this matter, as 99 percent of [the] SWAT calls end in a peaceful resolution. That's always the goal . . . and that's what we started doing. We . . . began with negotiations from our trained negotiators . . . through the PA system." Sergeant Ingham did not hear any response to the negotiation attempts.

Sergeant Ingham explained that in the moment, he believed the SWAT team needed to see where Mr. Ely was in the building. He explained that Mr. Ely was "posing a threat," specifically in that: (1) Mr. Ely had already discharged what was believed to be a rifle inside the building, including when Claremont Police Officers were outside attempting to negotiate with him; and (2) Mr. Ely earlier articulated that he thought the Claremont officers were machines talking to him and that the machines in the shop were also talking to him. Sergeant Ingham was also aware that Mr. Ely had "access to a large

variety of weapons as well as ammunition and he [was] possibly armed with a rifle and a couple pistols.”

Sergeant Ingham’s biggest concern with not being able to see Mr. Ely was losing track of him in the building. Sergeant Ingham said, “The fact of losing him in this building and him having all these ways to exit the building was a huge, huge, huge concern for me.” He further explained that they did not have the personnel on scene to contain him completely, and that Mr. Ely could “be in someone’s front yard within 30 seconds,” depending on which side of the building he exited from. Sergeant Ingham became more concerned as it became darker outside.

At some point, the SWAT team decided to use the ram to push open Mr. Ely’s door. Sergeant Ingham said that the SWAT team had used this technique “multiple, multiple, multiple times, sometimes . . . it gets compliance as soon as it happens. Sometimes [they] don’t see anything.” As the Bear driver used the Bear to push the door open, the door “crumpled in the middle” and partially opened inward, from left to right. As this happened, Sergeant Ingham was standing approximately three-quarters of the way toward the back of the truck. He was watching through the front windshield of the Bear as the door was forced open and gunfire erupted from within the shop. Sergeant Ingham explained:

[W]ithin a second of that door being pushed open we were met with a fury of gunfire. And I explain a fury of gunfire because I was in the Marine Corps, I was in Iraq. I’ve experienced gunfire before and I will tell you that this wasn’t a guy who just popped off a round in the air to say, “[G]et away, I’m having a bad day.” This guy intentionally let go a fury of gunfire from what I immediately recognized to be a rifle. And not only did I observe the, the flash of his rifle in the dark garage that he was shooting from, but also I could, I literally could hear the rounds being shot off as well as the flash and sparks coming from the front area of the truck.

He estimated that Mr. Ely shot 10 rounds at them.

Sergeant Ingham was concerned because it was now clear that Mr. Ely would shoot at an armored vehicle that was clearly marked as a police vehicle. Sergeant Ingham was especially alarmed that Mr. Ely would shoot at the vehicle knowing there were people inside. To Sergeant Ingham, this demonstrated that Mr. Ely had “no regard for . . . human life.” Sergeant Ingham said that none of the SWAT team members, either in the truck or on the perimeter, returned fire. In response to the gunfire, the team backed the Bear up. The SWAT team recognized that the vehicle was armored, but questioned how many times the Bear could be “hit like that” before the gunshots damaged the engine or the integrity of the windshield.

After regrouping, the SWAT team could see Mr. Ely inside the shop, and they drove the Bear back into position in front of Mr. Ely’s door in order to keep sight of Mr. Ely, fearing he could disappear into the building or escape through the front door. After pulling the Bear back up, the CNU continued negotiations through the LRAD. Sergeant Ingham could see that Mr. Ely was yelling back at them, but he could not hear what Mr. Ely was saying. Sergeant Ingham recalled the negotiator saying, “I can’t hear you. Like I, I want to hear you, I want to listen but I can’t hear what you’re saying, come to the door without a weapon, we can talk.” From what Sergeant Ingham could see, Mr. Ely stood approximately 25 to 30 feet inside the shop. He said that Mr. Ely “just moved around the entire time with his rifle, to include hiding behind things and pointing [his rifle] at [them].” Sergeant Ingham stated that when Mr. Ely was pointing his rifle at them, it appeared as though he was “looking to engage [them] but [he was] not firing at that point.”

At this time, the front door to the shop was partially open and Sergeant Ingham could see straight in and to the left of the shop doorway. As negotiation efforts continued, Sergeant Ingham saw Mr. Ely appear, point his rifle at them, and then disappear out of the SWAT team's view. After an extended period of negotiation efforts, the SWAT team decided to further open the door to increase their view into the shop.

In addition to his concern about Mr. Ely escaping into the building, Sergeant Ingham was further worried that Mr. Ely could even have been building a "bomb." He believed that Mr. Ely had already demonstrated that he was "not fooling around" and that he had already exhibited "some serious . . . anger . . . and violence." Sergeant Ingham said that the SWAT team "needed eyes on him so that [they] [could] figure out how to address this and hopefully come to a peaceful resolution."

After the SWAT team used the Bear to push the door further open a second time, the negotiation efforts continued. Sergeant Ingham felt the team tried everything they could to get Mr. Ely to "give up." Sergeant Ingham explained that they did not use any chemical munitions to encourage him to surrender because the SWAT team was concerned the chemical munitions could drive Mr. Ely into another part of the building, even though Mr. Ely continued to act erratically and point his rifle at them.

Sergeant Ingham was greatly concerned for the safety of the other officers outside the building and at the command post. He said, "[I]t's dangerous. So you know, at the end of the day he's . . . shooting at us, at police officers, multiple police officers with the intent to kill us. So obviously, we're . . . concerned for ourselves, we're concerned for our perimeter units that are within close proximity," and for the safety of the people who

were at the command post, which he estimated was approximately 200 to 250 yards away.

Sergeant Ingham explained that it would take only a matter of seconds for Mr. Ely to reach the command post if he escaped from the shop, especially under the cover of darkness. He said that he knew that because there was a large hill on one side of the building and a river on the other, Mr. Ely would run in one direction, toward the entrance of the facility, which was also the direction of the command post. Sergeant Ingham was also aware of the residential neighborhood nearby, where he had parked his cruiser on arrival; the other agencies on scene; and Mr. Ely's potential to escape, especially given his demonstrated "will to kill somebody."

Sergeant Ingham said that the team had to contain Mr. Ely. He explained that the first step in containing Mr. Ely was through the use of the Bear and through negotiations. They tried to "talk him out [and] get him unarmed." If Mr. Ely was unarmed, they could use other tactics to minimize the risks to both the SWAT team members and Mr. Ely.

Sergeant Ingham said that he suspected Mr. Ely was going to flee once he "started moving around the garage and then he grabbed a jacket." Sergeant Ingham said that based upon his experience in law enforcement and on the SWAT team, he believed this showed Mr. Ely was preparing to leave the room. At that same time, Sergeant Ingham saw Mr. Ely move toward the "inside wall of the garage." When Mr. Ely returned into Sergeant Ingham's view, it appeared that Mr. Ely had a second weapon. He recalled hearing "chatter in the truck," with SWAT team members asking whether Mr. Ely was now holding a shotgun. Sergeant Ingham was not able to positively identify a second gun

in Mr. Ely's hand, but Mr. Ely was still holding the "black AR-style rifle with a 30 round black magazine," which Sergeant Ingham never saw him put down.

Sergeant Ingham watched "[Mr. Ely] backing up from that inner wall and covering something with his jacket." Shortly thereafter, Mr. Ely came back within 10 to 15 feet of the door and started to put a jacket on. Sergeant Ingham also saw Mr. Ely load something into his left jacket pocket while still holding the rifle in his right hand. Sergeant Ingham did not know what Mr. Ely was putting into his pocket, but thought whether it was ammunition or "snacks for a long night," Mr. Ely was going to exit the building. He explained:

Coming out of the building is good unless you're armed showing no intent to give up. Showing no intent to give up and coming out armed, one or two things are happening. You're gonna again engage the truck 'cause that's the biggest thing in front of you, or two, you have now found something, a target or someone to engage with.

Sergeant Ingham said that his "biggest fear" was that Mr. Ely was going to show himself at the front door and he was going to run toward the command post and residences where "the chances of him killing others, harming others [was] 100 percent . . . very high . . . 99 percent."

At this time, four SWAT team members got out of the back of the Bear. Sergeant Ingham and TFC Larkin placed themselves on the passenger side of the Bear, while TFC Cyr and TFC Czyzowski positioned themselves on the driver's side. As Sergeant Ingham exited the Bear, he knew Mr. Ely was only approximately five feet inside of the shop door. He heard the negotiators' continued pleas to put the weapon down and to stop. Sergeant Ingham hoped Mr. Ely would put down his rifle at the doorway and be peacefully taken into custody.

From his position at the right of the Bear, Sergeant Ingham had to step out away from the protection of the Bear, so that he could have a clear line of sight. He said that if he could not clearly see Mr. Ely, he may have been forced to react to Mr. Ely, which would have put him at a disadvantage. Knowing that “action always beats reaction, 100 percent of the time,” Sergeant Ingham explained his belief that if Mr. Ely came around the passenger side of the Bear either to engage the team members or flee, their reaction would have been delayed about a second to a second and a half, due to the time necessary to perceive, process, and respond to Mr. Ely’s actions. Based upon the slight angle of the Bear, Sergeant Ingham recognized that his own position was very exposed, but that teammates on the driver’s side of the Bear were “exposed a little bit more.”

At this time, Sergeant Ingham could see Mr. Ely was still wearing the jacket, which was unzipped, a black t-shirt with yellow writing on the chest underneath the jacket, and was still holding the AR-style rifle with a 30-round magazine and what appeared to be an optic. Sergeant Ingham was aiming his rifle at Mr. Ely. He estimated that a “couple seconds went by as [Mr. Ely] continued to advance to the doorway.”

Sergeant Ingham told investigators that he believed if Mr. Ely discovered the SWAT team members’ positions, then Mr. Ely would “come up and we are going to be dead. He [was] 100 percent going to kill us.” Sergeant Ingham also explained that he himself only had a “certain amount of time that [he] [could] be out in the open before [Mr. Ely] saw him [and shot him].”

When Mr. Ely was within approximately two feet of the door, “he began to traverse over the tires that were laying on the inside of the door,” still holding the rifle in his right hand, carrying it in a downward 45-degree angle. Based upon how Mr. Ely was

carrying the rifle, Sergeant Ingham said he would have been able to finish bringing it up and shoot it. Sergeant Ingham saw Mr. Ely lift his right foot to step out over the tires at the door's threshold. Fearing that Mr. Ely was either leaving to shoot at the SWAT team or to flee while armed with at least the rifle in his hand, despite loud verbal commands to stop, Sergeant Ingham fired his rifle. Sergeant Ingham believed he discharged a volley of seven to nine rounds toward Mr. Ely's chest.<sup>26</sup> At the same time, he heard gunfire erupt from his teammates to his left and right. He believed that he saw his first round strike Mr. Ely in the chest.

When Sergeant Ingham fired at Mr. Ely, Mr. Ely was moving. With the benefit of hindsight, Sergeant Ingham believed Mr. Ely's movement may have been caused by the impact of the other team members' bullets. Sergeant Ingham saw Mr. Ely "move back and forth for a couple seconds" until he started dropping toward the inner wall, toward where the door had come to rest. Sergeant Ingham recalled continuing to shoot as Mr. Ely fell behind the door. He was concerned that that the door provided cover and concealment for Mr. Ely.

Sergeant Ingham stated that the SWAT team members all stopped shooting at about the same time. He also heard TFC Cyr yell, "Cease fire!" When he heard the cease fire, he held his rifle upward in a "high ready" position. He reported to TFC Cyr and TFC Czynowski that he knew he struck Mr. Ely and that he believed at least one of the rounds was a critical wound to his chest. They reported that they also struck Mr. Ely with bullets. At that point, the team believed the threat was over. Sergeant Ingham said that the team

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<sup>26</sup> Sergeant Ingham estimated that the time between his first shot and the volley of six to eight rounds was less than a second. He estimated that he could not have shot more than 10 rounds.

ensured their weapons were on safe, and believed that the SWAT team “only shot enough rounds to stop the threat and that[] [was] it.”

Sergeant Ingham did not hear a pause between the SWAT team members shooting. He said that he recalled the series of shots occurred “pretty rapid[ly].” Sergeant Ingham did not recall a large gap between any of the SWAT team members’ shots.

Before approaching Mr. Ely, the SWAT team used a remote operated robot that was equipped with a camera to evaluate Mr. Ely. Sergeant Ingham did not see the robot’s camera footage, but was informed that it was safe to approach the shop. The SWAT team members entered the shop with Sergeant Ladd, the SWAT medic. Sergeant Ladd confirmed that Mr. Ely was deceased. Sergeant Ingham noticed that the rifle he had seen Mr. Ely holding through the incident was resting near his feet. Mr. Ely was “slumped over forward almost as if his head was laying on his lap, or laying in his knees.” While continuing to clear the shop to ensure it was safe, Sergeant Ingham noticed multiple rifles and ammunition in what appeared to be a bedroom area. He also saw empty rifle and pistol casings scattered “everywhere on the floor.” It appeared to him that Mr. Ely had been discharging firearms before the SWAT team arrived.<sup>27</sup>

When asked why the canine was not deployed in this situation, Sergeant Ingham explained that canines do not have the training or ability to end a deadly force situation such as this and that here, a canine “never would have been used.”

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<sup>27</sup> Sergeant Ingham explained that he was aware that Mr. Ely “had been shooting throughout the afternoon and right up until prior to” the SWAT team evacuating the Claremont officers.

(4) *Trooper First Class Shane Larkin*

On April 14, 2021, members of the Office of the Attorney General interviewed TFC Larkin by in the presence of his counsel. At the time of the incident, TFC Larkin was assigned to the New Hampshire State Police Narcotics and Investigations Unit (NIU). TFC Larkin has worked for the New Hampshire State Police since 2003. TFC Larkin has been a member of the New Hampshire State Police SWAT team since 2007, and has been a team leader for approximately five years. Within the last year, TFC Larkin became an Assistant SWAT Team Commander.

TFC Larkin told investigators that on March 31, 2021, he had just arrived home from his regular duty shift with the NIU when he received a text message from Sergeant Ditolla, the SWAT team commander, regarding the incident in Claremont. Shortly thereafter, TFC Larkin began responding to Claremont. Before and after he arrived, TFC Larkin learned several pieces of information, including: (1) Mr. Ely was believed to be armed with a rifle and two pistols; (2) the facility at 247 Sullivan Street was a warehouse; (3) Mr. Ely had fired at a vehicle with two people in it earlier in the day; (4) Mr. Ely had fired multiple rounds in the building since law enforcement had arrived; (5) Mr. Ely had access to the entire building; and (6) Claremont officers were pinned up against the building and could not leave their positions because of the shots that had been fired.

After he arrived on scene, TFC Larkin recognized the building at 247 Sullivan Street from a previous, unrelated SWAT call. TFC Larkin organized a perimeter around the building, replacing Claremont and Newport officers with SWAT team members. Sergeant Ditolla told TFC Larkin that Mr. Ely had last discharged a firearm around 5:30 or 6:00 p.m.

TFC Larkin learned that the warehouse had been evacuated and that Mr. Ely was the only person still inside. TFC Larkin was concerned, however, with the size of the warehouse and the fact that the interior of the warehouse, to his knowledge, was fairly open, with rooms separated only by chicken wire or paper. TFC Larkin felt that it was too dangerous for any of his SWAT team members to enter the warehouse because of the high potential they could be shot, and that the drone and the robot were rendered unusable.

As TFC Larkin placed SWAT team members in position on the perimeter, he learned that Mr. Ely had refused to communicate with CNU negotiators. After negotiators called Mr. Ely's cellphone, Mr. Ely told them to "fuck off," and shut his phone off.

After approximately 45 minutes of failed attempts to communicate with Mr. Ely, TFC Larkin joined SWAT team members in the Bear and proceeded to the front door of Mr. Ely's shop. Before proceeding to Mr. Ely's location, SWAT team members attached the ram to the front of the Bear. TFC Larkin was present in the Bear when the SWAT team used the Bear to pull Mr. Ely's SUV approximately 100 to 150 yards away from the door to prevent Mr. Ely from accessing the car to flee.

Once the car was removed, the SWAT team parked the Bear in front of Mr. Ely's door to begin hailing Mr. Ely using the LRAD. At this point, TFC Larkin had the back doors of the Bear locked for safety reasons, given their uncertainty as to Mr. Ely's location within the building, and the possibility that he could escape the building, come up behind the Bear, and shoot at SWAT team members while they were focused on the door in front of them. TFC Larkin also explained to investigators that throughout the

incident, he was not confident of Mr. Ely's location, given Mr. Ely's access to the rest of the building.

CNU team members continually used the LRAD to attempt to communicate with Mr. Ely. They identified themselves as the State Police, asked him to: (1) surrender; (2) turn his phone back on; and (3) communicate with the negotiators, including flicking the lights, so they knew he was uninjured. Mr. Ely did not respond to any of the requests. TFC Larkin stated that a mental health specialist offered to provide assistance, but was not able to assist because of the lack of communication from Mr. Ely.

TFC Larkin stated that after approximately 30 to 45 minutes of attempted negotiations, the SWAT team slowly breached the door with the Bear, in order to see if Mr. Ely was still in the shop and to observe the layout of the shop. TFC Larkin saw that the door did not fully open. Instead, it caved in sideways and did not open all the way because a barricade of tires was stacked two to three high on the interior side of the door.<sup>28</sup> As soon as the door was opened, TFC Larkin observed that the Bear was "hit with a steady rhythm of 10 to 15 rounds" of gunfire coming from the interior of the building fired "directly at the truck."

TFC Larkin, who was standing in the center of the truck, could see through the front windshield. He saw sparks, caused by Mr. Ely's bullets ricocheting off the Bear. Based on the rhythm of the shots and "how [the shots] were coming out," TFC Larkin believed that Mr. Ely was shooting at them with a rifle. He estimated that Mr. Ely was firing at them from approximately 20 to 30 feet inside the shop. TFC Larkin believed that Mr. Ely was attempting to kill him and his fellow officers.

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<sup>28</sup> TFC Larkin estimated that the door only opened approximately two feet.

After Mr. Ely shot at the SWAT team in the Bear, the driver backed the Bear up approximately six feet. TFC Larkin heard the roll call done over the radio with SWAT team members on the perimeter to make sure that none of them had been hit by the gunfire. The negotiators then began loud hailing to Mr. Ely again with the LRAD, asking Mr. Ely to put the rifle down, surrender, and come out with his hands up.

After the door was opened, Sergeant Ditolla told TFC Larkin that he was able to see Mr. Ely in the shop as he constantly moved back and forth from one side of the shop to the other. At this point, because it was dark outside, TFC Larkin was not able to see Mr. Ely from his vantage point.

About 15 to 20 minutes after Mr. Ely shot at the Bear, the SWAT team used the ram to further open the door to see inside the shop better. TFC Larkin believed that opening the door would also potentially make Mr. Ely “more uncomfortable and more vulnerable ‘cause once it’s opened up and he sees that we’re here, maybe he’ll surrender,” or allow the team to use less lethal force such as a gas gun, if necessary. After opening the door further, TFC Larkin could see Mr. Ely pacing from one side of the shop to the other. TFC Larkin saw Mr. Ely holding a rifle in one hand that had a “Romeo” optic with a red reticle, similar to the style of the SWAT team’s State-issued rifles. TFC Larkin saw Mr. Ely point the rifle at the Bear as he moved in the shop.

The negotiators continued to try to communicate with Mr. Ely, but he would not respond. They continually spoke to Mr. Ely, pleading with him to drop the rifle, to surrender, and to come out with his hands up. The negotiators repeatedly told Mr. Ely that he did not have to do this. At this point, TFC Larkin was concerned that Mr. Ely could escape from the building and pose a threat to both the law enforcement personnel at

the command post and to the private citizens in the area. He knew that it was important to keep Mr. Ely contained, as the warehouse was near downtown Claremont in close proximity to many residential houses.

At some point, TFC Larkin saw Mr. Ely grab a coat and something else that appeared to be a second rifle or shotgun. Mr. Ely was then positioned approximately 25 feet in from the threshold of the door, before he returned to pacing the room, often shielding himself behind a half wall, and pointing his rifle at the Bear. TFC Larkin believed that by grabbing a coat and a second weapon, Mr. Ely was not going to come out and surrender peacefully, but instead would come out firing his gun.

When Mr. Ely began advancing toward the threshold of the door, TFC Larkin observed that he had “a single rifle in his right hand, hanging in the...low ready” [position] along his side. TFC Larkin also stated that at this point, “[n]egotiations are now becoming more direct and telling him, drop the rifle, drop the rifle, drop the rifle. I believe [the negotiator was] using his first name, you don’t have to do this.” TFC Larkin thought to himself that “we cannot let this guy get out of this threshold.” At this point, SWAT team members decided to position themselves outside the truck. TFC Larkin viewed this as a “tough decision to make because I’m asking my guys to get out of this truck after they’ve already been fired at to try and apprehend this guy with a gun.” TFC Cyr opened the rear doors quietly, and TFC Larkin left last so that he could watch Mr. Ely through the windshield and pull SWAT team members back if necessary.

TFC Larkin went with Trooper Ingham to the passenger side of the Bear, while Trooper Czyzowski and TFC Cyr went to the drivers’ side. TFC Larkin was not sure exactly where Troopers Cyr and Czyzowski were positioned, but he was positioned to

Sergeant Ingham's right, further away from the Bear. TFC Larkin estimated that he was approximately 20 to 25 yards from the threshold of the door.<sup>29</sup> From his position, TFC Larkin could see Mr. Ely was wearing a black t-shirt with a logo on it. TFC Larkin immediately recognized that he and the other SWAT team members outside the truck were completely exposed, with no cover for protection.

TFC Larkin saw Mr. Ely continuing to advance toward the threshold of the door, with the rifle at his side. The rifle was pointed at the ground, and Mr. Ely held it "in an aggressive posture...like he had it in his hand and he was gonna use it...like a person who knows how to shoot a gun." TFC Larkin determined that he would have to use deadly force if Mr. Ely did not drop the rifle immediately, based on the fact that Mr. Ely had previously ignored repeated commands to drop the rifle and continued to advance.

Trooper Larkin stated:

He's advancing, told to drop the rifle several times, didn't... There was no surrendering, he was given clear commands the entire time. It was imminent to me that's what he was doing. I had been through several trainings myself and the team, action versus reaction drills. I know through my training and experience that action always beats reaction. If it's a tie I still lose so I was not gonna give him that opportunity to raise the rifle towards me. It was a clear threat to me, what he was trying to do prior to this and now where we're at.

TFC Larkin heard a shot from his left. "When that first round went off...[Mr. Ely] move[d] the rifle up or attempted to move it up to point. It looked like he was gonna point it." TFC Larkin said that when he shot, Mr. Ely was moving his arm up. He explained that he did not shoot because he saw Mr. Ely's arm moving. He said that he

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<sup>29</sup> While processing the scene, investigators determined that the shell casings that were collected from the area TFC Larkin described that he was standing were approximately 54.75 feet from the door to Mr. Ely's shop.

noticed the movement in the “millisecond” that he was starting to shoot. TFC Larkin fired one round during the initial volley of gunfire.

TFC Larkin continued aiming at Mr. Ely, following his body as Mr. Ely moved toward the right side of the door. TFC Larkin observed that Mr. Ely was initially facing straight on, but his body started turning sideways as he was struck by gunfire. TFC Larkin heard other rounds being fired to his left during this time. As Mr. Ely’s body moved during the gunfire, TFC Larkin said, “I didn’t feel comfortable taking the shot based on how [Mr. Ely] was moving and where his body was turning and torqueing itself to. I didn’t feel comfortable that I was gonna get the hits I wanted.” TFC Larkin explained, “I have to own every single round that I shoot so it has to be a good sight picture and it has to be a hit, and it’s gotta count. I didn’t feel comfortable with hitting another round because he was moving . . . .” TFC Larkin stated that it was concerning to him that as he watched what he believed were rounds impacting Mr. Ely’s body, “he is not going down, based on us shooting him. And . . . that was a big concern . . . why he wasn’t going down.”

Mr. Ely eventually fell and came to rest in a seated position about four feet inside the door from the threshold, facing in the direction of Sullivan Street, with his body partially obscured by the door. After Mr. Ely’s body fell into that position, TFC Larkin saw “the left side of [Mr. Ely’s] body, his left arm continue to move.” Upon seeing Mr. Ely’s left arm move, TFC Larkin fired two more rounds. At the time he fired his second two rounds, TFC Larkin stated that Mr. Ely was “moving towards” or “falling to” his final seated position. TFC Larkin believed that he was the last SWAT team member to fire any shots, and said that he did not hear any shots fired after his final volley of shots.

TFC Larkin stated that there were only a few seconds between his first shot and his last shot, and that the entire sequence occurred quickly. Specifically, he stated that “This is going fast...I think we’re only talking a few seconds from first to last.”

After he fired his final two shots, TFC Larkin said he saw Mr. Ely continue to move and thought to himself “I can’t let this be another Chief Maloney incident,”<sup>30</sup> so “I scream out, he’s still moving.” TFC Larkin was concerned that Mr. Ely was still moving, he said:

I did not want him to then just randomly as a last ditch effort take...his rifle and just start firing at us indiscriminately. We are completely exposed and now I have no idea where those rounds are gonna go to a guy [that] knows obviously we’re here, we’re shooting at him, his last ditch effort maybe thinks he’s gonna die and this is what he does, this is his last ditch effort to start firing rounds off and try to kill us.

After TFC Larkin screamed out that Mr. Ely was still moving, TFC Cyr responded by saying “cease fire, I think he’s down, he’s down.” TFC Larkin said “are you sure,” because at that point he could not see Mr. Ely’s face, and could only see his “left arm and a little bit of left leg.” It was dark, and TFC Larkin could not see that well, but the rifle appeared to be between Mr. Ely’s legs. TFC Cyr then said “he’s down, Shane, he’s down.”

TFC Larkin and the other SWAT team members then got back inside the safety of the Bear and deployed a robot to see if Mr. Ely was still alive. The team medic then checked Mr. Ely’s pulse and confirmed that he was dead. Mr. Ely’s rifle was between his legs, with the safety off. The SWAT team decided to leave it in position and not touch it.

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<sup>30</sup> Greenland, NH Chief Michael Maloney was killed on April 12, 2012, while executing search and arrest warrants at a home in Greenland. Chief Maloney was fatally shot by the suspect, who had concealed himself inside the basement of his home and fired at Chief Maloney and other officers who had taken cover outside of the home.

SWAT team members then entered the building to check for any people on the inside and found none.

When asked about his decision to shoot in the first instance, TFC Larkin stated that Mr. Ely “was an immediate threat” to him. TFC Larkin thought if he allowed Mr. Ely to break the threshold, “we are exposed. I thought he was gonna kill me. I, I thought he was gonna kill my guys...He already tried to kill people, civilians” and had potentially “tried to kill other police officers.” TFC Larkin articulated that he fired because Mr. Ely “was not obeying the commands . . . to drop the rifle and he was actively advancing towards us with . . . a rifle.” TFC Larkin was also concerned that Mr. Ely might harm private citizens in nearby houses if he were to escape.

When specifically questioned about the succession of gunfire, TFC Larkin stated that he fired one shot initially, and then a second volley of two more shots upon seeing Mr. Ely’s left arm move. TFC Larkin stated that he believed the time between the first volley and the second was “maybe two, three seconds.” Both shots in the second volley were fired in quick succession, “just as quick as I can pull the trigger.” Upon being presented with the surveillance footage that captured the gap of approximately 15 seconds, TFC Larkin stated “[i]f you’re telling me you have video of it, then obviously I have to agree” that the gap was longer than he had previously stated. TFC Larkin said that “in my mind, I don’t remember it being that long,” and that he did not remember a delay of 10 seconds or more. He clarified that he did not dispute any footage and if investigators had audio, then he was “agreeing with it.” He explained, “That’s just what I remember, me trying again to re-acquire that sight picture. It’s still a threat to me so

that's why I continued firing." After hearing the audio played, TFC Larkin stated, "[I]t seems longer than it appeared to me to happen."

(5) *Trooper William Neilsen*

On April 14, 2021, members of the Office of the Attorney General interviewed Trooper Neilsen in the presence of his counsel. Trooper Neilsen has worked for the New Hampshire State Police since 2012. Prior to working for State Police, Trooper Neilsen was a patrol officer with the Claremont Police Department for approximately one year and three months. Trooper Neilsen has been on the New Hampshire State Police SWAT team since 2014. He graduated from both the basic and advanced NESPAC SWAT schools. Trooper Neilsen is currently assigned as a detective in the New Hampshire State Police Troop C barracks.

While responding to the warehouse, Trooper Neilsen learned that police officers who were on scene reported that Mr. Ely had discharged a firearm, but was still continuing to converse with the four Claremont officers positioned outside his shop. At the scene, he and Trooper Noah Sanctuary proceeded to an area along the embankment between Sullivan Street and Mr. Ely's shop. Troopers Sanctuary and Neilsen were working as marksman observers. Both Trooper Sanctuary and Trooper Neilsen had magnifying optics on their firearms, with Trooper Sanctuary carrying a higher powered rifle with a greater magnifying optic. Based upon their position, they were able to watch the doors and windows into Mr. Ely's shop, providing additional observations and lethal cover fire for the Claremont officers, should they need it. The embankment from Sullivan Street down to Mr. Ely's shop area was a steep hill that was covered in thick brush. Claremont Chief Mark Chase had informed Trooper Neilsen that the windows in Mr. Ely's shop were covered with paper, without a way for Trooper Neilsen to see inside.

At one point while on the embankment, Trooper Neilsen heard Mr. Ely discharge what sounded like a rifle from inside the shop. Trooper Neilsen was aware that Mr. Ely had bragged about having an Airsoft gun. Based upon his training and experience, however, Trooper Neilsen believed the sound he heard was that of a rifle being shot. Trooper Neilsen explained that the gunshot sounded as though it was in the corner of the building where Mr. Ely's shop was. The four Claremont officers were still positioned along the outside brick wall of Mr. Ely's shop. Trooper Neilsen was not sure what direction the shot was fired. Because the Claremont officers relayed that Mr. Ely was still communicating after the shot, Trooper Neilsen knew that Mr. Ely had not shot himself.

Trooper Neilsen could hear Mr. Ely and the Claremont officers yelling back and forth at one another. He could not discern exactly what the Claremont officers were yelling to Mr. Ely, but knew that they were giving "general instructions, [such as], "If you're able to come out, if you can come, we're not here to hurt you." Trooper Neilsen said that while initially he heard Mr. Ely respond to the Claremont officers after the gunshot, shortly thereafter Mr. Ely became unresponsive and they could not hear where he was. Eventually, Trooper Neilsen saw the Bear drive to the building and evacuate the four Claremont officers who were still up against the brick wall outside of Mr. Ely's shop.<sup>31</sup>

Trooper Neilsen said that Mr. Ely did not respond to CNU team member, Trooper Rae. He explained that he could clearly hear Trooper Rae over the LRAD. He stated:

She spoke very clearly about wanting Mr. Ely to come out. If he came out, to have nothing in his hands; that nobody was there to harm him; that we wanted to get him help. If he needed to go up to the hospital, we could get him to the hospital. [Trooper Rae] referenced family members of his. So, part of the crisis negotiator's job is to gather intelligence in an attempt to

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<sup>31</sup> Trooper Neilsen also saw the Bear pull Mr. Ely's vehicle away from his door with a tow strap.

persuade somebody to come out and peacefully surrender. So, she was referencing family members of his. I believe there was some social media post about his dog. So, she referenced his dog and how we wanted to get him and his dog out. So, she was using all the training that she had to attempt to persuade him to come out and peacefully surrender, telling him again, leave your weapons inside, come out, nobody's here to hurt you, we just want you to come out and talk with us.

Trooper Neilsen could not remember exactly how long these negotiations lasted, but he estimated over an hour.

Trooper Neilsen explained that as the Bear was driving around the building to setup in its position, his radio battery and Trooper Sanctuary's radio battery started dying. A Claremont police car was parked at the intersection of Laurel Street and Sullivan Street, which was near their position. The Claremont Police Department used the same kind of radios as the New Hampshire State Police, so he went to the Claremont officer and asked if the Claremont Police Department could bring them new batteries. Trooper Neilsen said, "While I was waiting for those spare batteries to be brought to us from the police department, that's when I heard an initial volley of fire, which I guess was about 10 to 15 rounds." Trooper Neilsen ran back to Trooper Sanctuary's position. Trooper Sanctuary told Trooper Neilsen that the SWAT team had used the ram attached to the Bear to force Mr. Ely's door open, and in response, Mr. Ely fired several rounds toward the Bear.

Trooper Neilsen watched the Bear back away from Mr. Ely's door. He heard Trooper Rae continue to talk to Mr. Ely over the LRAD, saying, "Jeff, you need to drop your rifle. Drop your weapon. Drop your gun, come out with nothing in your hands." Trooper Neilsen said that the negotiations continued for approximately another 20 minutes. He then saw the Bear push Mr. Ely's door further out of the way.

After the door was pushed open more, Trooper Neilsen and Trooper Sanctuary could only see “a little bit” past the threshold. Trooper Neilsen heard Sergeant Ditolla, whom he knew was seated in the front passenger seat of the Bear, relaying over the radio that Mr. Ely was pacing back and forth in the shop with a rifle in one hand. Sergeant Ditolla reported that the rifle was an AR-style rifle with what appeared to be a 30-round magazine with tape around it, and that Mr. Ely was carrying the rifle in a “high port” position, which based upon Trooper Neilsen’s training, meant the rifle was in “a position that [was] ready to drop down and engage.”

Trooper Neilsen remained at this location until the replacement batteries were delivered. After receiving the batteries from the Claremont officers, he and Trooper Sanctuary moved to a position further down the embankment that provided a better vantage point into Mr. Ely’s shop. Trooper Sanctuary stood against a utility pole on the embankment, while Trooper Neilsen was to his right, close by but further down the embankment. Trooper Neilsen estimated that he and Trooper Sanctuary were approximately 75 to 100 yards from Mr. Ely’s doorway. At one point, Trooper Sanctuary asked the team to move the Bear to the right, to provide them a better vantage point. After the Bear moved, Trooper Neilsen could see “quite a distance in from [the] threshold.” While it was still dark and difficult to see details of the interior, he was eventually able to see Mr. Ely’s left side when Mr. Ely was closer to the door and on the side of his shop closest to Sullivan Street. At this time, it was dark out. The area was illuminated by lighting on the Bear and security lighting on the building.

After the Bear was repositioned, Trooper Neilsen listened as Sergeant Ditolla and TFC Cyr relayed information over the radio. He heard that Mr. Ely had one rifle, then

two rifles, then one rifle - which he was holding at “high port.” Trooper Neilsen also heard TFC Cyr relay that “Mr. Ely was pointing that rifle at the Bear.” Trooper Neilsen could not see Mr. Ely when this information was being relayed. In addition to the information being relayed over the radio, Trooper Neilsen could hear Trooper Rae negotiating with Mr. Ely. He could hear Trooper Rae repeatedly telling him to drop the rifle and come out with nothing in his hands. Trooper Neilsen also heard that Mr. Ely had his rifle and was putting on a jacket. Trooper Neilsen said, “People don’t normally put on a jacket unless they’re going outside or they’re getting cold.”

Trooper Neilsen noted a new “sense of urgency” in Trooper Rae’s tone. He said she had a “heightened pitch” in her voice, which he interpreted as meaning that Trooper Rae “was worried about something happening.” He described that this tone was distinctly different from Trooper Rae’s tone during her first round of negotiations before the team used the Bear ram a second time. He believed her inflection change meant “that from her observations she believe[d] that Mr. Ely [was] going to do something to cause a confrontation or that [he was] going to cause a confrontation.”

Again, Trooper Neilsen was only able to see the left side of Mr. Ely because he was closer to the Sullivan Street side of the doorway. Trooper Neilsen recalled that either he or Trooper Sanctuary reported over the radio that Mr. Ely’s left hand was empty. Sergeant Ditolla reported back that Mr. Ely was still holding a rifle in his right hand. Trooper Neilsen could also hear Trooper Rae repeating her request that Mr. Ely drop the rifle. It appeared to Trooper Neilsen that Mr. Ely “[r]aised up his left hand and flipped his middle finger . . . to the Bear, kind of in response to Trooper Rae telling him that he needed to drop his rifle.”

At the time, Trooper Neilsen was unaware if there were other SWAT team members outside of the Bear and in the immediate area of Mr. Ely's shop. From his experience, however, he knew that a quick reaction force team was likely in the Bear and ready to react. He did not recall seeing the Bear's rear doors open or any team members exit the Bear, but he knew the quick reaction force "would have been close by to that Bear, using the Bear as cover with eyes on that door to react."

Eventually, as Trooper Rae's voice inflection was going up, saying, "Jeff, drop the rifle, Jeff, drop the rifle," Mr. Ely eventually moved closer to the threshold, which is when Trooper Neilsen gained a view of him. Believing that Mr. Ely came to the threshold in order to exit or get a better angle to see the Bear or any troopers on the ground to continue firing at the officers, Trooper Neilsen determined that he needed to use lethal force to prevent Mr. Ely from shooting again. He explained

[Mr. Ely] had already shot at a civilian earlier in the day. He was shooting rounds while Claremont officers are trying to verbally negotiate with him outside of his door. He had shot at the Bear armored vehicle multiple times when the door was breached. And we have the crisis negotiator, who's trying to gain compliance by telling him, if you drop your rifle, nobody wants to hurt you, you just need to come out with nothing in your hands, drop the rifle, drop the rifle, drop your gun. And he was not compliant to that, to the point where when he presented in the threshold, he had already displayed his willingness to use deadly force, again against a civilian, as well as law enforcement. And in my eyes, that was an imminent threat of deadly force coming at that threshold.

Trooper Neilsen estimated that when he shot, he could see approximately 50 percent of Mr. Ely's body. He could not see his right side and he could not see a weapon in Mr. Ely's hands. Trooper Nielsen explained:

I did not see the rifle in [Mr. Ely's] hand, however, my SWAT team commander, who I trust with my life, is telling me "he has a rifle in his right hand, he has a rifle in his right hand." And I'm saying back to him, "his left hand's empty." And the response is, "he has a rifle in his right hand." I have a crisis negotiator who's trained and has the experience in

these scenarios, who's . . . voice inflection is going up because of her perceived anticipation about something happening, saying, "Jeff, drop the rifle, Jeff, drop the rifle, drop your gun." So, two people that I trust very deeply telling me, he still has a rifle in his hand, and the perception is that he may be acting.

Trooper Neilsen believed that Mr. Ely escalated the situation by proceeding from the back of the shop where he was pacing back and forth, to the "threshold" with a rifle, and refusing to comply with the commands to drop his gun. Trooper Neilsen also explained that beyond the threat Mr. Ely posed to himself and the SWAT team members on the ground, in the Bear, and on the perimeter, private citizens who resided in the area were also at risk. He explained that based upon his training and experience regarding "trajectory and distance capacity of a rifle," he knew that rifle bullets could "travel upwards of a thousand yards." He explained that he was present during a previous SWAT call in Claremont, during which a person shot numerous rounds from a house. He stated that "investigators after the fact were finding rounds impacting houses and stuff a quarter mile away from the house." He knew that the area surrounding 247 Sullivan Street was a densely populated residential area that was within the range of a rifle bullet, and "if rounds started coming out from inside [247 Sullivan Street], it would have [had] the potential for them to impact." Based upon this, Trooper Neilsen believed Mr. Ely coming to the threshold with a rifle was "a threat to anybody."

In addition to hearing Trooper Rae tell Mr. Ely to drop his gun, when he shot Mr. Ely, Trooper Neilsen heard "simultaneous gunfire." He did not know who shot, but heard the gunfire in the general area of Mr. Ely's shop. Trooper Neilsen said that Trooper Sanctuary, who he was standing directly beside, fired his weapon as well, but he did not know how many times. He said that he had heard about "auditory exclusion" in training, and he experienced it during this incident.

Trooper Neilsen explained that he ceased firing when he believed Mr. Ely was “no longer able to access that weapon, which [was] when he started to fall on the ground.” He described that Mr. Ely fell to his left, across the doorway. “I decided to cease fire because I believed he had been incapacitated at that point that he couldn’t access his rifle at that point.” He said that he and Trooper Sanctuary checked on one another. Trooper Neilsen believed he then continued looking through his rifle optic “to ensure that [Mr. Ely] didn’t attempt to grab the rifle again or that he didn’t attempt to crawl into a different part of the apartment,” but could not recall what he specifically saw after the shooting. He believed Trooper Sanctuary continued looking through his optic as well, and that he was probably able to see more clearly through his optic, which had more magnifying power.

Trooper Neilsen recalled that after he stopped shooting, he heard a couple more shots, but he was not sure who was shooting, or from where. He said, “It was -- it was segregated from the initial volley of gunfire. How long it was or from where it was, I don’t recall.” He did not remember still looking through his rifle’s optic when the shots were fired. He then recalled Sergeant Ditolla relaying over the radio, something to the effect of, “Let’s pump the brakes, let’s slow it down.”

Trooper Neilsen believed that he first realized that Mr. Ely had barricaded the door when the team sent a robot to check on Mr. Ely and tires stopped the robot from entering the shop.<sup>32</sup> He said that the robot had a telescopic arm with a camera that was then used. He believed he heard it reported that Mr. Ely was not moving and SWAT team

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<sup>32</sup> Trooper Neilsen told investigators that after the incident, he learned that a SWAT team member in the Bear took a photograph of Mr. Ely shortly before the shooting. The photograph depicted Mr. Ely standing in the shop holding a rifle. Tires could also be seen in the photograph, blocking the doorway, but Trooper Neilsen did not see this photograph until after the incident.

members and medical personnel were entering the shop to check on Mr. Ely. The medical personnel determined Mr. Ely was deceased. The SWAT team checked the remainder of the shop for any remaining threats and then exited. Trooper Neilsen reported to Sergeant Ditolla that both he and Trooper Sanctuary had discharged their weapons.

(6) *Trooper Noah Sanctuary*

On April 16, 2021, members of the Office of the Attorney General interviewed Trooper Sanctuary in the presence of his counsel. The interview was audio-recorded. Trooper Sanctuary has worked for the New Hampshire State Police since 2016. Prior to working for the State Police, Trooper Sanctuary was a patrol officer with the Walpole Police Department from 2013 to 2016, and the Chesterfield Police Department from 2008 to 2013. Before working as a police officer, Trooper Sanctuary served in the United States Marine Corps for five years. Trooper Sanctuary has been a member of the New Hampshire State Police SWAT team since 2018. He graduated from both the basic and advanced NESPAC SWAT schools. He graduated from the marksman-observer sniper school in 2019, and has been assigned as a SWAT sniper since 2020. Trooper Sanctuary is currently assigned as a patrol trooper in the NHSP Troop C barracks.

When Trooper Sanctuary arrived on scene, he met with a State Police detective, who was speaking with witnesses and friends of Mr. Ely. Trooper Sanctuary learned that Mr. Ely's name was "Jeff" and that he lived at 247 Sullivan Street, which was a large industrial building with multiple businesses and shops. Mr. Ely's friends said that Mr. Ely was a "casual drug user," and used drugs such as marijuana and cocaine. They also said that they suspected that he had recently started using methamphetamine. The friends reported that Mr. Ely had become increasingly paranoid over the previous couple of weeks. The friends explained that Mr. Ely had been seen with two firearms in the past

and had made claims that he had an AR-type rifle. Trooper Sanctuary also learned that Claremont officers had been talking with Mr. Ely through the building walls and they heard two gunshots in his shop. The building had been evacuated prior to Trooper Sanctuary's arrival.

Trooper Sanctuary and Trooper Neilsen updated the SWAT commander, Sergeant Ditolla, about what they had learned upon the sergeant's arrival. The two then proceeded to an area on the embankment between Sullivan Street and the 247 Sullivan Street building, toward the southeast portion of the building. The embankment was steep, with brush and saplings that partially obstructed Trooper Sanctuary's view. Trooper Sanctuary had a department issued rifle that was equipped with a magnifying scope. Their position was elevated, allowing Troopers Sanctuary and Neilsen to see the windows and door into Mr. Ely's shop, which was approximately 100 yards away. He saw the door was solid and the windows were either blocked or spray painted. Trooper Sanctuary was unable to see into the shop, but noted that there were possibly two access points to the roof.

Despite his partially obstructed view, Trooper Sanctuary remained on the embankment because in the daylight they could still see the area outside Mr. Ely's shop, and they had some form of cover. The need for cover was important because as they got into position on the embankment, Trooper Sanctuary heard two gunshots, which sounded like they were fired from inside Mr. Ely's shop.<sup>33</sup> Additionally, Trooper Sanctuary stated he was concerned for the Claremont officers in the immediate area around Mr. Ely's shop:

[T]he officers were really close to the building. We knew [Mr. Ely] already fired inside of the building as well. So, I wanted to get into [a] position that I could observe what was going on, so I could report that, and

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<sup>33</sup> Trooper Sanctuary recalled hearing the gunshots being discussed over the radio as well.

also be able to protect those other Claremont officers that were really close to [Mr. Ely's] door.

At the time, Trooper Sanctuary still believed Mr. Ely was in his shop because Mr. Ely was verbally communicating with the Claremont officers. Trooper Sanctuary said that he heard the Claremont officers yelling, “[H]ey Jeff, are you okay? We want to talk to you, can you come on out?” Trooper Sanctuary could not hear Mr. Ely’s responses, but the Claremont officers reported Mr. Ely’s responses – or lack thereof – over the radio. Trooper Sanctuary described Mr. Ely’s communication as “sporadic.”

Trooper Sanctuary told investigators that his biggest concern at that point was keeping track of where Mr. Ely was in the building. Having heard from Mr. Ely’s friends that he lived in the building, and had done maintenance work in it, Trooper Sanctuary believed Mr. Ely had access to the entire building.

Trooper Sanctuary witnessed the Bear evacuate the Claremont officers, and position itself in front of Mr. Ely’s door. He heard Trooper Rae begin loud hailing Mr. Ely using the loudspeaker. Trooper Sanctuary said that Trooper Rae continually announced who they were, repeatedly asked Mr. Ely to exit the shop without anything in his hands, and asked him to answer his cellphone. Trooper Sanctuary did not perceive Mr. Ely respond to Trooper Rae’s hails.

Troopers Sanctuary and Neilsen’s radio batteries began dying. There was a Claremont officer approximately 50 yards behind their position controlling traffic. While Trooper Neilsen went to the officer to retrieve additional batteries, Trooper Sanctuary

saw the Bear force Mr. Ely's door open and immediate gunfire from within the building.<sup>34</sup> Trooper Sanctuary described:

As the Bear came around and pushed in the front door, there was a long string of gunfire. I could tell . . . based on the noise, and I could see some sparks and things in front of the Bear, whether it was from on the ram itself or the front of the ram or on the door, there was some kind of sparks. So, I could tell that the gunfire was coming from the building directed toward the troopers and the Bear.

Trooper Sanctuary estimated that Mr. Ely shot approximately 10 rounds in rapid succession. He noted the gunfire was markedly louder than when he heard it from inside the shop earlier. Trooper Sanctuary said he was not sure why it was louder, whether it was because the door was open at that point or not, "but the sound was loud." Based upon his proximity to the shooting and his experience, he believed Mr. Ely was shooting a rifle. As the Bear was pushing the door open, it blocked Trooper Sanctuary's view into the shop, and after the Bear backed up, Trooper Sanctuary could only see approximately three feet into the space past the now broken door.

After the Bear backed up, Trooper Sanctuary immediately heard more loud hailing. Specifically, Trooper Sanctuary heard Trooper Rae saying, "[Y]ou need to drop the rifle, you need to drop the gun, we want to talk to you, you need to drop the gun." Based upon what Trooper Rae was saying, Trooper Sanctuary believed that Mr. Ely was still armed and was not complying. Trooper Sanctuary said that the loud hailing continued through the remainder of the incident until the point the SWAT team members used lethal force.

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<sup>34</sup> Because Trooper Sanctuary was focused on observing, he could not definitively estimate the time between when the loud hailing began and when the SWAT team used the Bear to open the door.

At one point thereafter, Sergeant Ditolla reported over the radio that Mr. Ely was pacing back and forth. It was now completely dark, but the area was illuminated by automatic lights on the building and the lights on the Bear, sufficient for Trooper Sanctuary to see without the use of his night vision goggles.

At one point, the Bear was used to further open Mr. Ely's door, and Trooper Sanctuary relocated to a position about 10 yards to his right, behind a utility pole that provided a view that was less obstructed by the saplings and brush. From the new vantage point, Trooper Sanctuary had a "little bit better" view into Mr. Ely's shop.<sup>35</sup> Trooper Sanctuary heard someone radio from the truck that Mr. Ely was in front of the door and was still holding the rifle. At one point, Trooper Sanctuary briefly had a limited view of Mr. Ely "way back in the room," where he could only see Mr. Ely from his abdomen to his knees. Trooper Sanctuary could not see Mr. Ely's right arm, which he believed was the arm holding the gun, based on reports from the troopers in the Bear. Trooper Sanctuary said:

By the time I could kind of figure out what I as looking at – because he advanced toward the door – but as he advanced, he moved to my left and kind of out of view, until he came up, right up to the door where I could see his left hand from the door.

Trooper Sanctuary could hear Trooper Rae continuing to tell Mr. Ely to "drop the gun." Trooper Sanctuary saw Mr. Ely "sticking his left hand out and giving the [middle] finger to the truck, right as they were telling him to drop the gun." Trooper Sanctuary noted Mr. Ely showed "continued defiance and noncompliance" as he was "advancing" on the Bear at that point, despite Trooper Rae "pleading with him to drop the gun."

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<sup>35</sup> Trooper Sanctuary noted that he had requested the SWAT team move the Bear to the right to improve his line of sight, which they did.

Trooper Sanctuary believed, based upon the heightened tone and tempo of Trooper Rae's voice that the incident was escalating. Trooper Sanctuary could not see Mr. Ely anymore at this time, but heard Sergeant Ditolla report over the radio that Mr. Ely was directly back from the door and was still holding the rifle.

Shortly thereafter, Trooper Sanctuary saw Mr. Ely move to Trooper Sanctuary's right, into the doorway. Trooper Sanctuary said that he shot at Mr. Ely, aiming "center mass." He advised that at the same time he fired, he heard gunshots from Trooper Neilsen and from the area around the Bear.<sup>36</sup> He stated that Mr. Ely remained standing "for some time in the door. Then he kind of went down to his knees." Trooper Sanctuary said at that point, he perceived Mr. Ely was still a threat, "because he started turning, dipping his shoulders, as he was kind of reaching and looking towards the troopers and the Bear, kind of still trying to face us." Trooper Sanctuary then fired a final round at Mr. Ely.<sup>37</sup> After shooting at Mr. Ely, Trooper Sanctuary's view of Mr. Ely was obscured by the door. Trooper Sanctuary explained, "I could only see like just a tip of him. I didn't see anything further from that but I really couldn't see him." He said, "[Mr. Ely] kind of went out of my view." Trooper Sanctuary estimated that he discharged three to four rounds. Prior to shooting, Trooper Sanctuary was not aware that other members of the SWAT team had exited the Bear.

In making the decision to shoot, Trooper Sanctuary said that he was aware: (1) that Mr. Ely had shot at private citizens in the parking lot earlier and struck one of their

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<sup>36</sup> Trooper Sanctuary explained that Trooper Neilsen's rifle was not suppressed and "it was very loud and very disorienting." A suppressor is a device that is attached to the muzzle of a firearm to reduce the intensity of the gunshot report, thereby muffling the sound of the gunshot.

<sup>37</sup> At some point after the final volley of gunfire, Trooper Sanctuary heard "cease fire" announced over the radio.

vehicles; (2) that he was noncompliant with the Claremont officers; (3) that he had discharged a firearm with the Claremont officers in the immediate area; (4) that he shot at the SWAT team members in the Bear; and (5) that he had not complied with any commands from the SWAT team, and, instead, shot at them and made an obscene gesture at them. Trooper Sanctuary said he perceived Mr. Ely was an immediate threat to the SWAT team members in the Bear, other troopers on the perimeter, and the surrounding area. He further explained the other lives he was concerned about:

I know there were some areas that were evacuated, but there were still buildings within that area that had not been evacuated. During this whole time, I could still see some cars would go by behind me. You could see houses with lights on. So there were still civilians in the area. So, at that point, I thought I knew he was an imminent threat to the troopers in the Bear, troopers on the perimeter, and the public.

Trooper Sanctuary explained that he was also concerned that Mr. Ely would leave the shop with the rifle. He noted that while he did not see the rifle when he shot at Mr. Ely, he believed he was still holding the rifle based upon Trooper Rae's commands over the LRAD that he heard and the reports he was receiving over the radio. Trooper Sanctuary said when "I fired, it was because I perceived an imminent threat to the other troopers there and to the general public."

Trooper Sanctuary elaborated on his concerns. He stated that he was concerned for the SWAT team members that were in the Bear because, while the Bear was armored, "it's bullet resistant. It's not bullet proof." He was also concerned for the safety of himself and the other troopers who were on the perimeter. Trooper Sanctuary also explained that in his experience, "rounds can go up and they are still devastating as they come back." Furthermore, he estimated that Mr. Ely posed a possible threat to the command post, as it was only about 150 yards away.

With regard to the succession of shots, Trooper Sanctuary estimated that the initial volley of gunshots, which included his shots, lasted approximately four seconds. He said that there was then a pause of several seconds, which he estimated was five to seven seconds, then he heard three or four additional gunshots from the area of the Bear. Trooper Sanctuary did not recall hearing any radio communication as this occurred. After the shooting, Trooper Sanctuary heard a cease fire announced over the radio. He recalled hearing the cease fire command after the final volley of shots.

#### **F. Crisis Negotiation Unit Efforts and Observations**

Sergeant Ditolla notified the CNU about the incident at 247 Sullivan Street shortly after receiving the initial request for the SWAT unit. CNU Commander TFC Jonathan Stephens responded, along with CNU Troopers Rae and Newton. TFC Stephens submitted a written report documenting the CNU's involvement in the incident. On April 21, 2021, members of the Office of the Attorney General interviewed Trooper Rae, the primary negotiator. On June 11, 2021, members of the Office of the Attorney General interviewed Trooper Newton. On June 9, 2021, members of the Office of the Attorney General interviewed TFC Stephens.<sup>38</sup>

In his report, TFC Stephens noted:

The role of the CNU is to gather intelligence that can be used during communication with the subject in order to build rapport with the subject and work towards a peaceful resolution. The subject must be a willing participant in the process to have a chance of a peaceful resolution.

Trooper Newton was the first CNU team member to arrive on scene. Within 10 minutes of Trooper Newton's arrival, he heard the report that Mr. Ely fired two additional shots,

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<sup>38</sup> Trooper Newton's and TFC Stephens' interviews focused mainly on their observations and perceptions of the sound and sequence of the final gunshots.

and less than 40 minutes later, he discharged another two rounds. Trooper Newton spoke with Claremont officers, Mr. Woodman, and Ms. Holloway to obtain background information on the incident and Mr. Ely. Mr. Woodman offered to be what the CNU refers to as a Third-Party Intermediary (“TPI”).<sup>39</sup> The CNU noted however, that Mr. Ely had been hostile toward Mr. Woodman earlier in the day.

In addition to collecting background information, Trooper Newton obtained Mr. Ely’s phone number, which he called. The call lasted less than one minute. Mr. Ely was “extremely agitated and yelled. He abruptly told [Trooper] Newton to ‘go fuck himself ’ and then hung up.” The CNU made several more attempts to call and text message Mr. Ely, but Mr. Ely never responded. TFC Stephens believed Mr. Ely shut off his cellphone.

Trooper Rae spoke with Amy McPheters, a mental health provider at West Central Behavioral Service (“WCBS”).<sup>40</sup> Ms. McPheters was the on-call local mental health provider. She confirmed that Mr. Ely had not been to the WCBS, but offered to be available in the event Mr. Ely was willing to talk with a mental health provider, and offered to respond to the scene as a “Licensed Hostage Negotiator.” Trooper Rae thanked her, and asked that she remain available by cellphone off-site, as TFC Stephens noted in his report that the “scene was still dangerous as [Mr. Ely] continued to discharge his firearm.” Although the CNU had worked with several mental health providers, Trooper Rae had not worked with Ms. McPheters.

Eventually, Troopers Rae and Newton traveled with the SWAT team in the Bear to attempt to negotiate with Mr. Ely. Trooper Rae was designated the primary negotiator.

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<sup>39</sup> A TPI is an individual not connected to law enforcement, such as a family member or friend, who are used to hopefully influence a subject to peacefully acquiesce to law enforcement commands.

<sup>40</sup> According to its website, WCBS was a “nonprofit community mental health care provider for the Upper Valley and Sullivan County, NH.” WCBS had, among others, an office in Claremont.

While Troopers Rae and Newton were attempting to negotiate with Mr. Ely from the Bear, TFC Stephens continued monitoring the incident and gathering intelligence. In gathering intelligence, TFC Stephens reviewed Mr. Ely's Facebook page and noticed that he had posted during the incident. TFC Stephens attempted to contact the Facebook friends who had responded to Mr. Ely's post, but was unsuccessful.

Trooper Rae has worked for the New Hampshire State Police since 2014. Prior to working for the State Police, Trooper Rae was a New Hampshire Liquor Commission Liquor Enforcement Officer from 2012 to 2014. Trooper Rae has been in the New Hampshire State Police CNU for approximately two years. She graduated from the Federal Bureau of Investigations ("FBI") Crisis Negotiations Course in 2019. Trooper Rae is currently assigned as a detective with the Special Investigations Unit ("SIU").

Trooper Rae explained that, after taking her position in the Bear, the Bear eventually proceeded to the area directly in front of Mr. Ely's door. Trooper Rae was seated in the middle area of the Bear, somewhat behind the driver and front passenger. Trooper Rae had a "pretty good view" through the front windshield of the Bear.

While positioned in front Mr. Ely's door, Trooper Rae used the LRAD system to loud hail Mr. Ely. Trooper Rae's focus was opening up a line of communication. When loud hailing, Trooper Rae used Mr. Ely's first name, and made statements such as: "Jeffrey please give me a chance, pick up the phone, "Jeffrey this is the State Police," and "We're not leaving, please, please reach out, I want to hear from you." While Trooper Rae was hailing, Trooper Newton tried calling Mr. Ely's cellphone.

After loud hailing for a period of time, the SWAT team decided to push open Mr. Ely's front door because they were unable to see into the shop.<sup>41</sup> Trooper Rae said that almost immediately upon pushing the door open, she saw muzzle flashes in the doorway and heard gunshots coming from the shop.<sup>42</sup> Trooper Rae said that she instinctively ducked down. Trooper Rae said that, while she knew she was in an armored vehicle, it was still a scary feeling to have someone shooting at her. She perceived the muzzle flashes came from a lower position, and she wondered whether Mr. Ely was crouched down and waiting when firing. Trooper Rae said she remembered seeing two rounds hit the Bear, thinking one round struck the headlight area of the Bear and the other round struck the ram. She expressed concern that Mr. Ely might run out of the shop and keep firing.

After the shooting, the team backed the Bear up. At that point, she could see Mr. Ely moving in the background of the shop through the partially open door. At certain points thereafter, Trooper Rae recalled that perimeter law enforcement officers reported hearing Mr. Ely screaming. She also recalled hearing him yelling at times, but was unable to understand what Mr. Ely was saying from her position inside the Bear. Trooper Rae told Mr. Ely over the LRAD that she could not hear him, that she wanted to talk with him, and she asked him to please turn his phone back on and to call her. Trooper Rae also told Mr. Ely to please put his weapon down.

Trooper Rae recalled either Sergeant Ditolla or Trooper Livingstone, the Bear driver, announce that Mr. Ely was still pointing the rifle at them. At another point, it

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<sup>41</sup> Trooper noted that there were windows, but she could not see through any of them.

<sup>42</sup> Trooper Rae was unable to estimate the number of shots that were fired, but she said at least three rounds.

appeared to her as though Mr. Ely may have been trying to barricade in front of the door. She said the biggest concern was trying to keep Mr. Ely in sight. When the team moved the Bear forward and pushed the door in a second time, Trooper Rae repeatedly loud hailed that they were going to push in the door more because they wanted to be able to see and communicate with him. Trooper Rae hoped that by explaining what they were doing, it might encourage Mr. Ely to communicate back with them.

At a certain point, Mr. Ely walked closer to the threshold, and Trooper Rae had a good view of him. She could see that Mr. Ely was still holding the rifle, so she told him to drop his weapon and that she could not communicate with him if he did not put his weapon down. She explained to investigators that as Mr. Ely walked closer, he was waiving his hand and moving the rifle around. Mr. Ely seemed very agitated. Trooper Rae continued telling him, "Jeffrey, Please, just drop the weapon . . . We don't want to see anyone get hurt . . . Please. I know things are tough right now for ya, I know you're going through things, but please just put your weapon down . . . I can't talk to you unless you put your weapon down." Trooper Rae did not recall how many times she gave Mr. Ely those instructions, but she told investigators that she gave similar instructions to Mr. Ely "over and over." Mr. Ely never put the rifle down. Every time Trooper Rae was able to see Mr. Ely, he was still holding the rifle.

When SWAT team members noted that Mr. Ely was still holding the rifle and was putting on a jacket, Trooper Rae was concerned. Trooper Rae repeatedly told him that if he put the weapon down and came outside, he would be safe. Trooper Rae saw his demeanor "was just so agitated." She told investigators, "I couldn't get through to him

the whole time, the whole few hours that we were there . . . eventually he was still approaching, he was still coming towards the threshold, and he . . . still had his rifle.”

Trooper Rae explained that as Mr. Ely walked closer to the door and it looked as though he was going to leave with his rifle, she told him to “please, please, stop,” thinking he was going to come outside with the rifle “ready to go.” Trooper Rae recalled that in the seconds before the shooting, her voice changed and she was talking faster, telling him: “Please Jeffrey put the weapon down;” “Please don’t do this;” “Please don’t come outside;” and “Don’t do that, don’t do that.” Trooper Rae said that she was still giving those commands when she heard the gunshots. She told investigators that Mr. Ely had gotten closer and closer to the threshold and she believed he was leaving the shop.

Trooper Rae initially flinched when she heard the gunfire, but looked up to see Mr. Ely, and then heard another two rounds. Trooper Rae was not sure what Mr. Ely was doing at that point, but there was only a brief pause between what she classified as “rapid” gunfire and the two additional shots. Trooper Rae explained:

I was just looking up to see if he was down and, again, I-I just saw a form . . . something down on the ground, um but it was . . . kinda almost at the same time, I guess, when I kinda looked over and saw something, and I just remember thinking like, -- that’s him, I think he’s down now, like I don’t think anyone is moving now, but I didn’t have a great view either of him, -- I couldn’t see his hands or anything at this point too [because of the tires].

She estimated that the pause between the gunfire was possibly “one or two seconds.”

Trooper Rae did not believe that the pause could have been in excess of 10 seconds.

Trooper Rae could not specifically identify the location of where the gunfire came from.

The gunshots sounded as though they were coming from outside, somewhat to her left and behind her position in the Bear.

Trooper Rae believed Mr. Ely was a threat at the time she heard this gunfire, as she believed he was exiting to shoot at her and the other troopers. She stated:

[G]oing off the whole situation and how it unfolded, I absolutely feared that he was going to shoot at us again if he got outside further, and I think that's why I so frantically started to tell him "please put it down, put the gun down," cause' I think my fear was real, um my fear for the other members that were outside and not protected by an armored vehicle um, was real, so think I'd just like to put out there that -- I did believe, absolutely, he would have shot at us again.

Trooper Rae clarified that she did not know the SWAT team members had exited the Bear until after the shooting, but that her belief Mr. Ely was about to shoot at them again was the same.

#### **G. Witness Accounts from the Bear, Command Post, and Perimeter of 247 Sullivan Street**

In addition to the six State Police SWAT team members who discharged their weapons and the first responding law enforcement officers, investigators interviewed 30 additional law enforcement officers and an emergency medical technician, who were on the perimeter, at the command post, or in the State Police Bear during the uses of deadly force.<sup>43</sup> These officers were from New Hampshire State Police, the Claremont Police Department, the Newport Police Department, and the Sullivan County Sheriff's Office. The emergency medical technician was a member of the Golden Cross Ambulance service. Two of the troopers on the perimeter and four troopers within the Bear had the most direct observations of both Mr. Ely's, and eventually the SWAT team members'

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<sup>43</sup> Many of these law enforcement officers provided written reports as well. Supplemental interviews mainly focused on the respective officer's observation of the sound and sequence of gunfire. Claremont Police Chief Chase and Sergeant Dickerman were interviewed twice. The first interview focused on the overall facts and circumstances that led up to the State Police SWAT team response. The second interview was focused on their observations from the command post of the sound and sequence of the SWAT team's use of deadly force.

gunfire. Summaries of their reports and interviews are included below. Following those summaries are discussions of other observations made by personnel on the perimeter or at the command post.

(1) *State Police SWAT Team Commander Sergeant Gerard Ditolla*<sup>44</sup>

At approximately 3:31 p.m., the State Police Troop C Commander, Lieutenant Michael Kokoski, contacted Sergeant Ditolla regarding a SWAT Unit request by the Claremont Police Department. Lieutenant Kokoski advised him that a male subject, later identified as Mr. Ely, had discharged a firearm at a vehicle containing two occupants in a parking lot and had subsequently barricaded himself inside his shop, which was attached to a large industrial building. Sergeant Ditolla learned that Mr. Ely was reportedly armed with an AR-style rifle and two handguns, and was firing rounds after local officers responding to the scene, giving rise to probable cause for felony reckless conduct charges.

After speaking with Lieutenant Kokoski, Sergeant Ditolla contacted Assistant SWAT Unit Commanders TFC Cyr and TFC Larkin to update them with the initial information. He then contacted State Police Colonel Nathan Noyes to advise him of the request. Sergeant Ditolla also notified CNU Commander Stephens, Tactical Driver Trooper Livingstone, and Bomb Squad Commander Sergeant Jeff Dade before responding to the scene.

Sergeant Ditolla arrived at the scene shortly after 5:00 p.m., and made contact with Lieutenant Kokoski and Claremont Police Chief Chase. After he received an update

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<sup>44</sup> As the SWAT Team Commander, Sergeant Ditolla provided an initial overview of the incident to investigators on April 1, 2021. He also provided a written report, and was later interviewed about the sounds and sequence of the SWAT team members' gunshots.

from Lieutenant Kokoski that Mr. Ely was continuing to discharge his weapon he updated Colonel Noyes, who authorized a full SWAT team activation. Sergeant Ditolla was also updated on the location and staffing of the perimeter, as well as the building's layout. Sergeant Ditolla learned that police officers were speaking to Mr. Ely through the exterior walls of his shop.

Sergeant Ditolla was on the scene around 5:27 p.m. when he heard two gunshots, reportedly fired from inside the shop. Around this same time, Sergeant Ditolla was advised that an arrest warrant had been issued for Mr. Ely for felony reckless conduct and a search warrant had been issued for his shop.

After gathering preliminary information, the SWAT team developed a plan to relieve the Claremont and Newport officers from the perimeter and contain Mr. Ely to the building. Once SWAT team members occupied perimeter positions they changed radio frequencies to a "local" radio frequency that used a radio repeater system in the Bear to transmit their communications to one another.<sup>45</sup> Sergeant Ditolla sat in the front passenger's seat, directly in front of the windshield, throughout the incident.

When the Bear first pushed in the door to the shop, Sergeant Ditolla heard and saw Mr. Ely shoot 10 to 15 rounds at them from a long gun. Sergeant Ditolla heard the loud gunfire and was able to see muzzle flashes and sparks coming from the front of the Bear. After shooting at the SWAT team members, Sergeant Ditolla could see Mr. Ely pointing his rifle at the Bear from deep inside the room, then moving around with his rifle behind what looked like a large white object.

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<sup>45</sup> Because the SWAT team operates through the Bear radio repeater, their communications did not reach and were not recorded by either the State Police or Claremont Police dispatch centers.

After the Bear pushed in the door a second time, Sergeant Ditolla could clearly see that Mr. Ely was brandishing an AR-style rifle. Later, Sergeant Ditolla saw that he was holding one AR-style rifle in each of his hands for a brief time. Sergeant Ditolla regularly updated the perimeter SWAT team members with what the SWAT team in the Bear was seeing inside the shop, including descriptions of the firearms that Mr. Ely had and how he was carrying them. This included when Mr. Ely held the rifle up to his shoulder and pointed it at the Bear, holding the rifle up at a “high port” position, with the buttstock under his arm and the muzzle oriented at a 12 o’clock position, and holding the rifle down by his side. At all times Sergeant Ditolla observed that Mr. Ely maintained control of the rifle’s “pistol grip,” where he could access the fire controls including the safety selector and the trigger.

When Mr. Ely was yelling and screaming at the SWAT team members, Sergeant Ditolla was unable to hear him or decipher what he was yelling at them, even when the Bear’s engine was not running. After Mr. Ely put on a jacket, Sergeant Ditolla saw him still holding an AR-style rifle by its pistol grip, as he ignored commands and moved from deeper inside the shop to the door.

At approximately 8:27 p.m., Sergeant Ditolla took a photo of Mr. Ely with his jacket on and brandishing an AR-style rifle and disseminated it to the SWAT team over their text chat. *See* Figure 1 (above). Mr. Ely then moved closer to the door. Sergeant Ditolla heard Trooper Rae pleading with Mr. Ely “to the point where she was almost out of breath for him to put the weapon down and exit with nothing in his hands.” As Mr. Ely got closer to the door, the SWAT team members, whom Sergeant Ditolla described as the

“arrest team,” exited the rear of the Bear. Sergeant Ditolla said the SWAT team members were positioned at the rear of the Bear and were prepared to take Mr. Ely into custody.

As Mr. Ely moved closer to the door with his AR-style rifle still in his hand, Sergeant Ditolla heard several gunshots fired from the rear of the Bear. Mr. Ely was partially obstructed from Sergeant Ditolla’s view behind the shop door, but he saw what appeared to be rounds impacting Mr. Ely’s body. Sergeant Ditolla saw Mr. Ely “react” to the impact of the rounds and saw him eventually slump to what appeared to him as a seated position, further behind the door. Mr. Ely’s body then began to slowly slump forward, still maintaining a seated position. In describing the gunfire, Sergeant Ditolla said that he heard “quite a lot of gunfire going off simultaneously, followed by a pause of two, three, maybe four seconds and then a few more gunshots.” When asked about the length of the pause, Sergeant Ditolla said he was aware that there was an audio recording that captured the shooting, which depicted a gap of approximately 15 to 17 seconds between the shots, but that “I don’t recall the length of time being anything close to that.”

(2) *State Police SWAT Team Tactical Driver Trooper Daniel Livingstone*

As the driver of the Bear, Trooper Livingstone was interviewed about his observations of the immediate moments surrounding the uses of deadly force by the SWAT team members. Trooper Livingstone observed Mr. Ely moving closer to the doorway with a rifle in his hand; a rifle that he was not putting down, despite the negotiator’s pleadings to do so. Trooper Livingstone saw Mr. Ely make a move to lift his leg over the tires that were piled up in front of the doorway when he heard the sound of gunshots coming from behind his position in the Bear. He watched Mr. Ely “slowly go down and out of sight,” explaining, “everything seemed to happen in slow motion.”

Trooper Livingstone was unsure how many gunshots he heard fired, but he could see the impact of the bullets on Mr. Ely's body. He said the volley of gunfire lasted a few seconds and then there was a "distinctive quick pause" followed by more shots. When asked how many gunshots he heard after the brief pause, Trooper Livingstone said, "Just a few, I can't put a number to it." When it was suggested that there was a pause of nearly 15 to 17 seconds between the volleys of gunfire, Trooper Livingstone said "Wow, I'm shocked. I never would have guessed it was that long, it seemed like a second or two."

(3) *State Police SWAT Team Trooper Kevin Dobson*

Trooper Dobson was a member of the SWAT Team and was positioned on the outside perimeter on the south side, the "D side" of the building with Trooper Aramus Caraballo. About 10 feet down from the guardrail, Trooper Dobson had a view of Mr. Ely's door and a good view of a large obstructed window on the corner of the building he could not see through. As the evening went on and negotiation attempts continued, the darkness made it difficult to see from Trooper Dobson's perspective.

From his vantage point, Trooper Dobson could see the Claremont and Newport officers positioned outside of Mr. Ely's shop trying to communicate with Mr. Ely. Trooper Dobson could hear Mr. Ely yelling from inside the building. He observed the Bear arrive and evacuate those officers before towing Mr. Ely's vehicle out of the way, and he could hear Trooper Rae talking to Mr. Ely through the LRAD system.

Trooper Dobson also saw the SWAT team use the Bear to push open Mr. Ely's door, which was immediately met with gun fire. He heard several rounds being discharged and strike the Bear, followed by Mr. Ely yelling from inside the building, although he could not understand what Mr. Ely was saying.

With regard to the final gunfire, Trooper Dobson heard on his radio that Mr. Ely was putting on a jacket. By putting on a jacket, Trooper Dobson believed Mr. Ely might be preparing to exit his shop. Trooper Dobson could hear Trooper Rae's voice over the LRAD change from a calm tone to an elevated level, as she instructed Mr. Ely to put his weapon down. While his attention was focused on the door, Trooper Dobson heard loud gunfire. Trooper Dobson said the gunfire was "rapid gunfire, quick, boom, boom, boom," and lasted for about three or four seconds. Initially he was very confident that the gunfire was coming from Mr. Ely, but then noticed two SWAT team members standing outside on the driver's side of the Bear. When asked about the sequence of gunfire he heard, Trooper Dobson said that he may have heard a quick pause, but he could not recall any specific pause.

(4) *State Police SWAT Team Trooper Aramus Caraballo*

Trooper Caraballo was a member of the SWAT Team and was positioned on the outside perimeter with Trooper Dobson. They were positioned on the side of the hill, with an angled view of Mr. Ely's door and of the roof access points. Regarding the final sequence of gunfire,<sup>46</sup> Trooper Caraballo heard a change in Trooper Rae's voice and he "was zeroed in on the door expecting he was about to come out," when he observed a large series of gunshots, which he described as a "loud volley of gunshots from multiple weapons, from different distances." He stated that there was a quick pause in the gunshots for a brief second, followed by another shot. Trooper Caraballo could not remember if it was just a single shot or more than one after this quick pause. He was unsure how many rounds were fired in total.

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<sup>46</sup> Trooper Caraballo also heard and saw Mr. Ely shoot the Bear when the team first used the Bear to push open Mr. Ely's door.

(5) *State Police SWAT Team Bomb Technician Trooper First Class Matthew Partington*

TFC Partington was assigned as the SWAT Bomb Technician and was seated in the back seat of the Bear behind Sergeant Ditolla. He made several observations relative to this report. TFC Partington heard negotiators notify Mr. Ely multiple times that there was both a search warrant and an arrest warrant for him. TFC Partington saw Mr. Ely yelling and that he appeared angry. Mr. Ely paced and held a rifle in his right hand.

Mr. Ely moved forward in the room toward the doorway on two occasions. The first time he was yelling and gesturing angrily at the Bear. He put the rifle he had in his hand down and appeared to pick up another rifle, then went further back in the room. He returned toward the doorway a second time and picked up a jacket, and again returned to the back of the room. Mr. Ely maintained control of the rifle in his hand during that time despite negotiators directing him to put his weapon down and come out of the building.

Eventually, as Mr. Ely began walking forward toward the doorway with the rifle in his right hand, TFC Partington could see what appeared to be an additional rifle magazine or magazines in the left cargo pocket of Mr. Ely's shorts. He saw Mr. Ely continue toward the door. It appeared that he might be attempting to leave the building. Mr. Ely was still holding the rifle in his right hand. TFC Partington heard several members of the SWAT team get out of the Bear as Mr. Ely neared the threshold of the exterior door. TFC Partington could see several tires stacked immediately inside the doorway. As Mr. Ely reached those tires, and while negotiators asked him over the LRAD to put the weapon down, Mr. Ely appeared to begin raising his rifle in his right hand. TFC Partington then heard gunshots simultaneously from behind and outside of the Bear to his left and right. As Mr. Ely was struck with the bullets, he remained on his feet.

It appeared to TFC Partington that while being shot, Mr. Ely was still attempting to raise his rifle toward them. Mr. Ely then fell to the floor, partially behind the door.

In describing the gunshots he heard, TFC Partington said that he heard several rounds being fired from “multiple weapon systems, then a slight pause, and then two or three more gunshots.” He described the pause as a “momentary pause, only a few seconds.”

After the shooting, TFC Partington used a robot equipped with a remote camera to evaluate Mr. Ely. TFC Partington extended the robot’s camera through the doorway and into the room and saw a rifle lying across Mr. Ely’s feet. Mr. Ely’s left hand was grasping a small rail to his left side. Mr. Ely’s torso fell forward blocking a view of his right hand. Mr. Ely was motionless. TFC Partington showed the video screen to Sergeant Ditolla and took still photos with the robot. The photos were taken prior to any State Police personnel entering the building. The following is one of the photographs taken by TFC Partington.



*Figure 16 - Photograph Taken Using the Remote-Controlled Robot. The Yellow Callout box Depicts an Image Subsequently Taken by Crime Scene Investigators that Shows Mr. Ely’s AR-Style Rifle Between his Feet. Mr. Ely’s Body has Been Obscured in this Image. No Other Edits Have Been Made to this Image.*

(6) *State Police SWAT Team Medic Sergeant Christopher Ladd*<sup>47</sup>

Sergeant Ladd was assigned as the SWAT team medic, and was located in the Bear when lethal force was used. His account of Mr. Ely's initial gunfire, arming himself with additional ammunition or guns, demeanor, pointing his rifle at the Bear, and aggressive actions are consistent with those enumerated by other SWAT team members above.

At one point after the Bear fully opened the door to the shop, as Mr. Ely was shouting, Sergeant Ladd saw him begin "blading his body," with his right side away from the door. Sergeant Ladd could see what appeared to be rifle magazines in his left cargo pocket. Mr. Ely began picking up what appeared to be loose bullets and putting them into his jacket pocket while Trooper Rae was instructing Mr. Ely to drop the rifle and leave the building with his arms up.

After the four SWAT team members exited the Bear to take up positions on either side of it, and while Trooper Rae continued to plead with Mr. Ely to drop the gun and come out with his hands up, Mr. Ely quickly turned from the bladed position he was in and faced the door. Mr. Ely was still holding the rifle in his hand when he did this, and Sergeant Ladd heard the SWAT team members simultaneously shoot what Sergeant Ladd estimated was 15 to 20 rounds. Sergeant Ladd heard gunshots from both sides of the Bear. He said "It was several shots and it was quick, in my mind it was just seconds." Sergeant Ladd said that Mr. Ely "didn't drop at first, and then he fell to his knees while still holding the rifle." He further explained, "There was a brief pause when the volley

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<sup>47</sup> This summary of Sergeant Ladd's observations is focused on the events after the Bear was positioned in front of Mr. Ely's door. Sergeant Ladd's recollection of the events preceding that point were consistent with the information provided by other witnesses, as detailed above.

stopped, and the pause seemed literally like a blink of an eye.” Sergeant Ladd believed there were one to two additional shots. He was not sure what direction those shots came from.

With the rifle still in his hands, Mr. Ely moved to the center of the doorway and then fell backward into a seated position. Mr. Ely’s head then fell forward, ultimately coming to rest slumped over at his waist. When Sergeant Ladd saw this happen, the shooting stopped and he immediately went to the back of the Bear to check on the four SWAT team members who were outside. All four SWAT team members confirmed that they were uninjured.

After a robot was used to evaluate Mr. Ely, the SWAT team entered Mr. Ely’s shop and Sergeant Ladd evaluated Mr. Ely. His feet were close together and an AR-style rifle was between his legs, still in the fire position. Sergeant Ladd determined that Mr. Ely was deceased.

(7) *Perimeter and Command Post Observations*

The remainder of the law enforcement and emergency medical personnel witnesses who were either on the perimeter or at the command post did not directly observe the use of deadly force. Thus, instead of recounting every individual statement, to avoid duplication, a general summary of what they told investigators is included below, with some references to individual observations.

The command post was initially established in the entrance to 247 Sullivan Street, but was eventually moved to a safer location 1200 feet further west of Mr. Ely’s shop, in the area of the Albion Avenue and Sullivan Street intersection. The command post did not have a line-of-sight to Mr. Ely’s shop.

Additionally, SWAT team members were positioned around the immediate property of 247 Sullivan Street, while outer perimeter law enforcement officers and emergency medical personnel were positioned as far away as a half-mile west of the building. Based upon their individual perspectives, there were varying recollections of the sound and sequence of gunfire. For example, estimates about the time between the volleys of fire ranged from no gap at all to a minute.

At the time of the use of lethal force, Claremont Police Chief Chase, Deputy Chief Grasso, and Sergeant Dickerman, as well as Newport Police Chief Wilmot and Detective Lee were positioned at the command post. In describing what they heard, Chief Chase and Deputy Chief Grasso each separately recalled that they heard a volley of several gunshots, followed by what they estimated was approximately a 10 second gap, followed by two or three more gunshots.<sup>48</sup> Chief Wilmot recalled hearing a large volley of gunfire, then, following a “brief” gap, he heard more gunshots. While Detective Lee remembered hearing a large volley of gunfire by the SWAT team, he did not remember hearing any gap between the gunfire. Paul Whalen, an emergency medical technician employed by the Golden Cross Ambulance service, was also at the command post at the time. He described the sound and sequence as a flurry of gunfire, followed by a pause that he estimated was 30 seconds to a minute, followed by two to five more shots.<sup>49</sup>

Claremont Police Sergeant Dickerman was at the command post and could hear the negotiator talking to Mr. Ely over the loud speaker. He told investigators that he could tell by her voice that things were escalating. He heard on the radio that Mr. Ely was

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<sup>48</sup> Both Chief Chase and Deputy Chief Grasso had reviewed Mr. Little’s surveillance recording before their interviews and did not recall the gap between the shots being that long.

<sup>49</sup> Investigators made several attempts to speak with a second emergency medical provider present at the command center, Nathaniel McCann. Mr. McCann did not return any of the messages left by investigators.

moving toward the door and then heard “a loud volley of gunfire, then a brief pause of a second or two, followed by three more shots.” He was very surprised to hear that the gap could have been in excess of 15 seconds, and said the gap “could not have been more than five seconds” in his opinion.

## **H. Digital Evidence**

There were no police-issued video or audio recording devices that recorded either the shots Mr. Ely fired at the SWAT team or the shots fired by the SWAT team members at Mr. Ely. None of the New Hampshire State Police troopers on scene were issued body-worn cameras and the Bear was not equipped with any video or audio recording devices. The relevant surveillance footage and social media content that was gathered is described below.

### *(1) Surveillance Footage*

Investigators gathered surveillance footage of Mr. Ely’s activities during the morning and afternoon of March 31, 2021, from cameras mounted on the front of the building at 247 Sullivan Street. Investigators also obtained video footage from the residence of Scott Little, located a short distance from 247 Sullivan Street, which did not provide any usable video footage, but did contain the aforementioned audio recording of the shots fired by the SWAT team members.

#### *(a) Surveillance Footage from 247 Sullivan Street.*

Surveillance cameras mounted on the front of the building at 247 Sullivan Street captured continuous footage of the area in front of 247 Sullivan Street, including the parking lot and the driveway from Sullivan Street. The footage shows that, at 9:47 a.m., a Maroon GMC consistent with Mr. Ely’s SUV entered the area of the parking lot in front

of the building, and appeared to drive around the building. At 9:59 a.m., the same vehicle drove across the parking lot at a high rate of speed, with no apparent purpose.

Although the vehicle's license plate cannot be seen on the surveillance footage, the vehicle is consistent with Mr. Ely's maroon GMC Envoy that was parked in front of Mr. Ely's shop. The surveillance footage is consistent with Donald Woodman's statement to investigators that Mr. Ely was driving recklessly in the parking lot on the morning of March 31, 2021.

The surveillance footage also shows this same GMC Envoy entering the parking lot at 247 Sullivan Street numerous times beginning at 2:46 p.m., driving aggressively each time. At 2:52 p.m., the SUV entered the parking lot from Sullivan Street, and pulled to a stop at the edge of the driveway. An object was pointed out of the driver's side window in the direction of three men standing at the other end of the parking lot. When the object was pointed out the window, the three men immediately scattered and ran away from the vehicle, as if seeking cover. The SUV then drove away.

*(b) Surveillance Footage from Mr. Little's Residence*

Investigators initially became aware of the existence of surveillance footage from Mr. Little's residence after a video clip was posted on Facebook by Michelle Widmer. As part of their follow-up investigation, investigators obtained the footage directly from Mr. Little, via email. The footage Mr. Little provided them was the same 54 second clip that was posted on Facebook.

Investigators subsequently attempted to obtain additional surveillance footage from Mr. Little's camera earlier in the day on March 31, 2021. Mr. Little informed them that at that time, the cellphone application he used to access the footage from the camera

would no longer allow him to access any footage prior to April 1, 2021. Mr. Little provided investigators with the SD card from the camera, but investigators were unable to obtain any additional footage of Mr. Ely's activity.

In reviewing Mr. Little's footage, investigators learned that the cameras faced in the general direction of 247 Sullivan Street, but did not capture the actual building. The time stamped video begins at 8:39:01 p.m. on March 31, 2021, and lasts 54 seconds.

The audio from the surveillance footage captured the sound of the shots fired by SWAT team members during the deadly force incident. According to the surveillance footage, beginning at 8:39:25 p.m., a barrage of gunfire can be heard. The barrage lasts until 8:39:31 p.m., and contains multiple gunshots fired simultaneously and in quick succession. Based on the quality of the recording and the problems of possible echoing, there are too many gunshots to count or to distinguish one from another. From 8:39:31 p.m. until 8:39:47 p.m., no more gunshots are recorded. Beginning at 8:39:47 p.m., three more gun shots can be heard. The distinct shots are fired in quick succession. The recording reflects that the last of the three shots is fired at 8:39:49 p.m.

Between 8:39:31 p.m. and 8:49:47 p.m., the audio contains the sound of indistinct voices speaking, in a manner consistent with police radio chatter. In order to decipher whether these sounds contained any relevant information, the audio was sent to the Federal Bureau of Investigation (FBI) for enhancement. A forensic video examiner with the FBI attempted to attenuate background noise and enhance the voices on the audio and returned the enhanced audio file for investigators. Due to the format and quality of the audio file, the FBI was unable to enhance the audio sufficient enough for investigators to decipher the voices on the audio or observe any further relevant information.

(2) *Social Media*

Investigators obtained the contents of Mr. Ely's Facebook account from March 10 to 31, 2021, via a search warrant. The information provided by Facebook in response to the search warrant matched the information previously described and shown to investigators by numerous witness.

Mr. Ely's Facebook posts indicate that he believed he was being surveilled by an unknown person or persons, and he became increasingly paranoid and upset over the perceived surveillance over time. The information in Mr. Ely's posts is consistent with descriptions of Mr. Ely's Facebook activity and declining mental state in the days leading up to March 31, 2021, as described to investigators by Lauren Holloway and others. The following images of Mr. Ely's Facebook activity from March 10 to 31, 2021, provided additional content to Mr. Ely's state of mind in the weeks, days, and minutes leading up to the shooting.

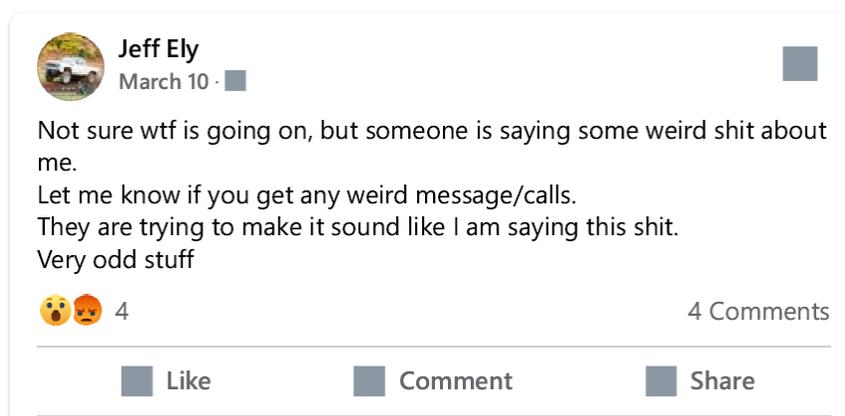


Figure 17 - Screenshot of March 10, 2021, Facebook Post on Mr. Ely's Facebook Page

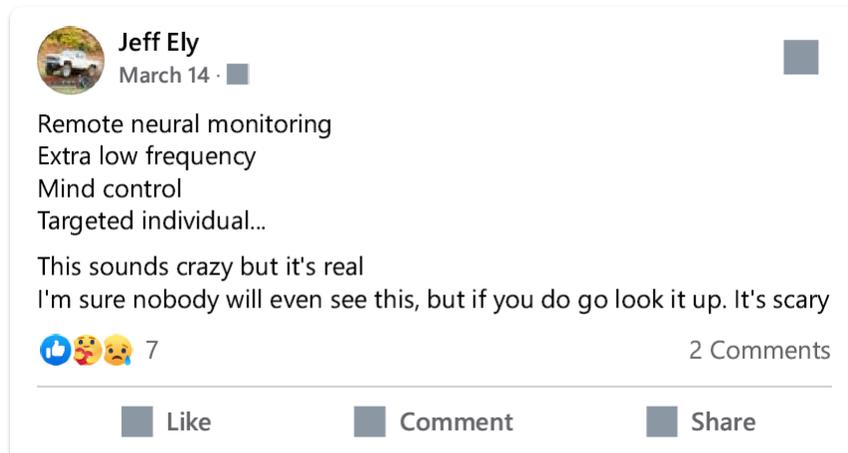


Figure 18 - Screenshot of March 14, 2021, Facebook Post on Mr. Ely's Facebook Page

(Intentionally left blank)

 **Jeff Ely**  
March 15 · 

# What the fuck?

 6 8 Comments

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 Like  Comment  Share

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 **[Redacted]**  
Which fuck?  
Like · Reply · 12w

 **Jeff Ely**  
**[Redacted]** idk  
Very weird shit going on  
Like · Reply · 12w

 **Jeff Ely**  
**[Redacted]** emf  
Mind control shit.  
Very strange  
Wouldn't believe it if it wasn't happening to me  
Like · Reply · 12w

 **[Redacted]**  
 think you're being experimented upon?  
Like · Reply · 12w

 **Jeff Ely**  
**[Redacted]** someone is doing weird shit  
Like · Reply · 12w

 **[Redacted]**  
**Jeff Ely** extract yourself from it. Disappear  
digitally and physically for a bit and see what  
happens  
Like · Reply · 12w

 Reply to Jeff Ely...    

Press Enter to post.

 **Jeff Ely**  
People trying to get me to kill myself  5  
Like · Reply · 12w

Figure 19 - Screenshot of March 15, 2021, Facebook Post on Mr. Ely's Facebook Page

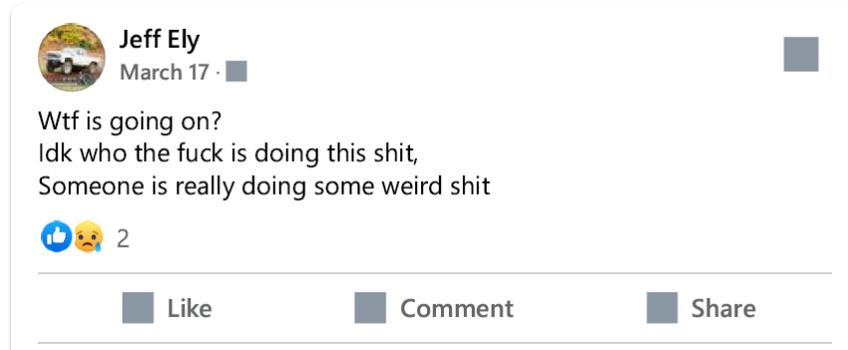


Figure 20 - Screenshot of March 17, 2021, Facebook Post on Mr. Ely's Facebook Page



Figure 21 - Screenshot of March 22, 2021, Facebook Post on Mr. Ely's Facebook Page

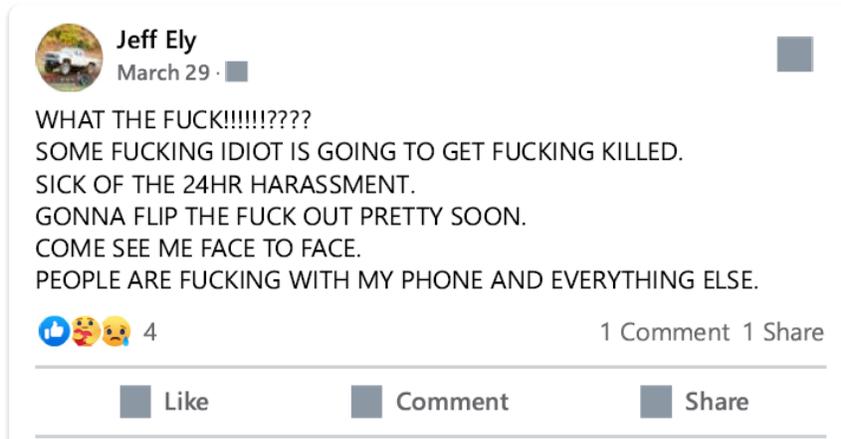


Figure 22 - Screenshot of March 29, 2021, Facebook Post on Mr. Ely's Facebook Page



Figure 23 - Screenshot of March 31, 2021, Facebook Post on Mr. Ely's Facebook Page

At 5:36 p.m. on March 31, 2021, Mr. Ely posted a video to Facebook. Although the video was too dark to see anything, the audio recorded a conversation between Mr. Ely and a police officer. Mr. Ely told the officer to “go fuck yourself,” and accuses him of lying to him. The officer repeatedly tells Mr. Ely that he is there to help him, and asks

Mr. Ely to communicate with him. Mr. Ely then repeatedly - and profanely - asks the officer, “[W]here are you?” After the officer asks Mr. Ely what type of phone he has, a gunshot is fired. Mr. Ely then asks “[W]here are you, you cuntface, stop harassing me!” Mr. Ely then states “[K]eep going, going, going, until you push me over the fucking edge!”

The audio recording from Mr. Ely’s Facebook post is consistent with Claremont Police Sergeant Joshua Wade’s description of his encounter with Mr. Ely at that time, and with footage from body-worn cameras worn by Sergeant Wade and other Claremont officers who were present.

Investigators also obtained a full record of Mr. Ely’s Facebook activity from March 1, 2021, to April 2, 2021, including private messages with other Facebook users. In his conversations with other Facebook users in the days leading up to March 31, 2021, Mr. Ely expressed sentiments similar to those in his Facebook posts: that some person or persons were surveilling him and that he was becoming increasingly paranoid and upset. Investigators also noted that at on March 31, 2021, at approximately 6:42 p.m., Mr. Ely sent the following message to a friend, “Come get the dog. I’m fucking done.”

### **I. Physical Evidence**

The New Hampshire State Police Major Crime Unit, under the direction of the Office of the Attorney General, spent two days searching, processing, and documenting the area in and around Mr. Ely’s shop, including the hillside where Troopers Sanctuary and Neilsen were stationed. In addition to photographing and video recording the scene, investigators used a three dimensional laser scanner, a laser measuring device, and a drone to further document and record the scene. The New Hampshire Fish and Game

Department used a canine that was certified in gun powder detection and scent discriminant to assist investigators in locating spent firearm shell casings.

During the use of deadly force incident, Sergeant Ingham, Trooper Neilsen, TFC Czyzowski, TFC Cyr, and TFC Larkin discharged State Police issued .223 caliber rifles. Trooper Sanctuary discharged a State Police issued .308 caliber rifle. Those firearms were secured shortly after the SWAT team members were relieved from their positions and were ultimately collected as evidence. Based on an examination of each of the SWAT team members' rifles, their interviews, and the recovered discharged cartridge casings from the scene, it appears they fired the following respective number of times:

- Sergeant Gary Ingham: 8 rounds
- Trooper William Neilsen: 7 rounds
- TFC Stefan Czyzowski: 6–8 rounds<sup>50</sup>
- TFC Nicholas Cyr: 9 rounds
- TFC Shane Larkin: 4 rounds
- Trooper Noah Sanctuary: 3 rounds

Investigators located a total of 36 spent firearm casings—33 .223 caliber rifle casings and three .308 caliber rifle casings—in the areas where the SWAT team members discharged their rifles. The image below depicts the approximate locations of where the casings were found in relation to Mr. Ely's shop. There were 16 .223 caliber casings found in the approximate area of the first yellow triangle; 11 .223 caliber casings in the

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<sup>50</sup> During his interview, TFC Czyzowski explained that it was his practice to load 28 rounds into the magazine, but he was not "100 percent" confident there were 28 rounds. He said that in his current assignment on the State Police Mobile Enforcement Team, he frequently deploys his rifle. After deploying his rifle, there are instances in which he replaces the unfired round that was cycled through the rifle during its deployment with a new round. If he removed the unfired round and forgot to replace it, he would have actually had 27 rounds in the magazine. He also explained that some of his magazines can be overloaded to hold 31 rounds. If he had fully loaded that magazine to 31 and removed two rounds to achieve the goal of 28 rounds, he would have actually had 29 rounds in the magazine. Accordingly, TFC Czyzowski said that there would have been between 27 and 29 rounds in the magazine before the shooting. There were 21 rounds found remaining in TFC Czyzowski's rifle.

approximate area of the second yellow triangle; and six .223 caliber casings in the approximate area of the third yellow triangle.



*Figure 24 - Overhead Photograph Depicting the Area Immediately Outside of Mr. Ely's Shop. The entrance to Mr. Ely's shop is marked with an orange arrow. The green rectangle represents the general area where the Bear was positioned during the gunfire. The three consecutively numbered yellow rectangles represent the approximate areas where investigators found .223 caliber rifle casings and the blue triangle signifies the approximate area where the .308 caliber rifle casings were found.*

By comparing the number of discharged firearm casings and unfired ammunition in the troopers' rifles—combined with the number of rounds carried in their rifles before the shooting, as described above—it appears that not all of the discharged firearm cartridge casings expended by the SWAT team members' firearms were recovered from the scene. It is not uncommon for investigators to be unable to locate every shell casing following such a dynamic incident. There are several possible explanations for why, despite a thorough search and the use of a gun powder detection and scent discriminant canine, investigators did not locate all of the discharged firearm cartridge casings or live ammunition at the scene. For example, rain the night of the shooting caused puddles of water and mud in the areas where the troopers discharged their rifles, and casings could

have been stepped on, forcing the rounds further into the dirt than they may have otherwise gone had the ground been dry. Likewise, the casings could have been moved or obscured when the Bear moved after the shooting to a better position to deploy the robot to check Mr. Ely's condition. Additionally, at least one of the missing casings belonged to Trooper Neilsen, who was positioned on the hillside. The hillside was steep and covered with thick brush. The area in which the other casings were found on the hillside was littered with glass, metal, and trash. Accordingly, a casing could have easily become stuck or lodged in between brush and/or litter, obscuring it from discovery.

My Ely's body was located just inside his shop. He was in a seated and slumped over position onto a generator to his left side, between the front doorway and the entrance to a bedroom area. His left hand was grasping a metal cart and his right hand hung to the floor with a 5.56 caliber AR-style rifle at his feet, with the buttstock resting between his feet.<sup>51</sup> The rifle had a round in the chamber and 28 live rounds in the magazine. The rifle was equipped with a red dot optic (scope) mounted to its receiver. The rifle's safety lever was in the "fire" position. Mr. Ely also had a 9mm pistol in a holster on his right hip. The pistol was fully loaded with a round in the chamber and 13 rounds in its magazine. Investigators located four loaded pistol magazines with 17 rounds in each magazine and two fully loaded 30-round magazines in Mr. Ely's pants pockets. Investigators found 22 spent rifle casings on the floor and on a white plastic shelf within the immediate area of Mr. Ely's body and the area where the SWAT team members saw Mr. Ely pacing after he had shot at them. Investigators also found several bullet fragments and additional spent rifle and pistol shell casings within Mr. Ely's shop.

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<sup>51</sup> The rifle was a DPMS, Incorporated AR-style 5.56 caliber rifle.

There were numerous bullet defects inside and outside of Mr. Ely's shop, as well as to the State Police Bear.<sup>52</sup> There were three bullet defects to the ram that was attached to the front of the Bear. There were bullet defects to Mr. Ely's door and to the plywood portion of the walls on either side of the door. The bullet defects to the door were from outside-inwards, but investigators were unable to determine from which direction the shots were fired because the plywood next to the door made this analysis impossible. Upon review of the photograph that Sergeant Ditolla took of Mr. Ely shortly before the troopers discharged their firearms, however, it appeared that the defects to the wood adjacent to the door were likely caused by rounds fired into Mr. Ely's threshold rather than coming out of his shop.

Investigators also documented the bullet defects within Mr. Ely's shop. There were defects found in several of the tires that Mr. Ely had used to barricade the door. Numerous beer cans were located in the entryway area of the shop, many of which had bullet defects to them. Surfaces throughout the entryway area, as well as the area where a desk was located toward the middle of the garage area of the shop, had defects. There were also defects on the door and wall of Mr. Ely's makeshift bedroom and on the interior brick walls. Investigators could not determine when, and in what order, the majority of interior defects occurred because the defects were on different surfaces, were found in multiple directions, and because Mr. Ely had discharged his weapon in his shop in at least two different directions, causing unknown prior defects in the room. Investigators were able to determine that a least one defect—a defect in a metal shelving unit that was between Mr. Ely's body and the entrance to his bedroom—had an inside-out

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<sup>52</sup> A bullet defect can be defined as: "Damage produced on an object/target because of a bullet/projectile impact event."

direction, *i.e.*, traveled from within the shop toward the SWAT team members positioned in front of the entryway.

Investigators seized various types of ammunition and numerous weapons from the bedroom area of Mr. Ely's shop. Additionally, Mr. Ely had access to weapons and ammunition throughout the open areas of the shop, with ammunition and at least one additional weapon staged for future immediate use. Investigators found two loaded 9mm semi-automatic pistols and an unloaded 9mm pistol in a bag on top of a desk in the middle of the shop.<sup>53</sup> There was also a loaded 30-round rifle magazine on the desk. There were two more loaded 30-round rifle magazines, containing 25 rounds and 30 rounds respectively, on a tool chest in the furthest western garage bay. Just beyond those magazines was a stack of wooden pallets close to the back wall of the shop. There was an unopened alcoholic beverage, a loaded 30-round magazine with 29 rounds, an unloaded pistol magazine, and a loaded 9mm rifle, with a round in the chamber and 29 rounds in its magazine on top of the pallets.<sup>54</sup>



Figure 25 - Diagram Documenting Mr. Ely's Shop Layout and Locations of Certain Evidence

<sup>53</sup> Various bullets, casings, and gun parts were located in the desk drawers.

<sup>54</sup> The rifle was a Palmetto State Armory PA-X9 AR-style 9mm rifle. The area where these items were located is circled in yellow in Figure 25 (above).

Upon searching Mr. Ely's maroon 2003 GMC Envoy, investigators found a loaded 21-round 9mm caliber magazine and a fully loaded 30-round AR-style rifle magazine on the front passenger's floor area.



*Figure 26 – Loaded Magazines Found On Front Passenger Floor Area of Mr. Ely's Car*

Investigators also searched the Toyota Tacoma struck by Mr. Ely's gunfire when he shot at the private citizens earlier that day. The right front tire was flat, but no bullet defects were located in the tire. A bullet defect was, however, found in the sheet metal within the front right wheel well.



*Figure 27 - Bullet defect to Toyota Tacoma*

## J. Autopsy Results

On April 1, 2021, Deputy Chief Medical Examiner Dr. Mitchell Weinberg conducted an autopsy on Mr. Ely. Dr. Weinberg determined that Mr. Ely's cause of death was multiple gunshot wounds. The gunshot wounds consisted of nine discrete wounds:

- two to the head (both to the left side);
- one to the neck (right side);
- two to the torso (one to the right chest and one to left upper back);
- three to the upper extremities (one to the right shoulder, one to the right forearm, one to the right elbow); and
- one to the lower extremities (left thigh).

The nature of the injuries was consistent with injury from a high velocity rifle. The wound path directionality of the majority of the wounds were front to back or from the side.<sup>55</sup> The exceptions were the wound to the left upper back and the two gunshots to the head, which were generally back to front and downward.<sup>56</sup> Not all the gunshot wounds were fatal wounds and there was no evidence of close range firing on any of the wounds. The shoulder and forearm wounds were graze wounds; the rest were entry wounds.<sup>57</sup>

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<sup>55</sup> The fact that there were gunshot wound paths with back to front directionalities is not definitive evidence of the parties' exact positions and movements during the entire incident. Mr. Ely was turning, moving, and falling during the gunfire. That movement combined with the varying angles from which the six SWAT team members were firing accounts for the directionality of the wounds, including the back to front directionality.

<sup>56</sup> Dr. Weinberg noted that because the two wounds to Mr. Ely's head were so close, he could not determine the precise paring between the wound paths and entry wounds. This prevented Dr. Weinberg from positively identifying the exact wound directions. Although he could not definitively determine the directions, he concluded that the wound directions were "slightly downward."

<sup>57</sup> New Hampshire State Police Forensic Laboratory Criminalist Jill Therriault performed a forensic firearm analysis, comparing the bullets and bullet fragments recovered from Mr. Ely's body to the six SWAT team members' rifles used during the shooting. Criminalist Therriault determined that one of the bullets recovered from Mr. Ely's body was fired from Sergeant Ingham's rifle. While a positive identification could not be made, forensic analysis suggests that four of the bullet fragments were consistent with a bullet or bullets fired from Trooper Sanctuary's rifle. The remaining bullet fragments lacked sufficient individual characteristics to identify which troopers' rifles they were fired from.

Dr. Weinberg determined that Mr. Ely's manner of death was homicide. As used by the Office of the Chief Medical Examiner, homicide is defined as the killing of one person by another.

The external examination during the autopsy revealed that Mr. Ely was fully clothed and that some of the clothing had defects consistent with gunshot wounds. Mr. Ely was also noted to be wearing a leather pistol holster on his right hip. Additionally, he had a loaded pistol magazine containing fourteen live rounds in his left rear shorts pocket.

Toxicology testing revealed the presence of Methamphetamine, Amphetamine, Buprenorphine, and Norbuprenorphine in Mr. Ely's blood.<sup>58</sup>

#### **K. Jeffrey Ely's Prior History and Criminal Record**

Prior to the incident on March 31, 2021, Mr. Ely had interactions with law enforcement authorities in Vermont and New Hampshire.

Mr. Ely's criminal record reflects numerous arrests and convictions in Vermont. Those arrests and convictions span the period from 1999 through 2013. Notably, Mr. Ely's record documents two separate instances of reckless endangerment, simple assault, disorderly conduct, and multiple counts of simple assault with a weapon. He served periods of incarceration as a result of some of those convictions and also violated his probation numerous times.

Mr. Ely's convictions in 2003 for two counts of reckless endangerment stemmed from an incident where he went to a family member's home, armed with a rifle, and threatened to kill two family members. His 2010 convictions for reckless endangerment

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<sup>58</sup> Buprenorphine is a synthetic opioid. Norbuprenorphine is the metabolite of Buprenorphine. Amphetamine and Methamphetamines are central nervous system stimulants.

and three counts of simple assault with a weapon involved an incident where Mr. Ely shot and wounded three people with a handgun.

The Claremont Police Department also had interactions with Mr. Ely, including during the days leading up to the March 31, 2021, incident. On March 20, 2021, the Claremont Police Department documented an animal cruelty complaint and listed Mr. Ely as the animal's owner and suspect. On March 26, 2021, Mr. Ely made a "belligerent" call to the Claremont Police Department about his dog being treated at the animal hospital. During the call, Mr. Ely refused to provide his contact information. He eventually swore at the dispatcher and hung up.

On March 27, 2021, the Weathersfield, Vermont Police Department notified the Claremont Police Department about a concerning interaction with Mr. Ely. The Vermont officer reported that Mr. Ely was having mental health "issues," and had put his fingers to his head like a gun "saying the voices are trying to kill him." Later that day, Claremont officers spoke with Mr. Ely. During that interaction, Mr. Ely said that he was not suicidal and had no intentions of hurting himself. He told the officers that he was "fine" and did not need any help from them.

On March 28, 2021, the Claremont Police Department gave "officer safety information" about Mr. Ely to the Windsor, Vermont Police Department. Specifically, the Claremont Police Department had information that Mr. Ely was "carrying a firearm" and having mental health issues and paranoia issues.

## V. APPLICABLE LEGAL STANDARDS

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like a private citizen, is justified in using deadly force when he/she reasonably believes that such force is necessary to defend himself/herself or a third person from what he/she reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as: "any assault . . . which the actor commits with the purpose of causing or which [the actor] knows to create a substantial risk of causing death or serious bodily injury."<sup>59</sup>

Although the use or attempted use of a weapon such as a gun or a knife presents the most obvious example of deadly force, the statute's reference to "any assault" contemplates that deadly force can arise when no weapons are used or even threatened. *Compare, e.g.*, RSA 631:1, I(a) & (b) (setting forth different variants for first-degree assault, one that occurs when an actor "[p]urposely causes serious bodily injury to another" and another that occurs when the actor "[p]urposely or knowingly causes bodily injury to another by means of a deadly weapon."). *See, e.g., State v. Pepin*, 156 N.H. 269, 272-73, 281-82 (2007) (sustaining first-degree assault conviction where "serious bodily injury" was found without it being inflicted by a weapon).

As to the requirement that an actor using deadly physical force for lawful defensive purposes must reasonably believe that deadly force by another is imminent, the phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v.*

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<sup>59</sup> "'Serious bodily injury' means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body." RSA 625:11, VI.

*Gorham*, 120 N.H. 162, 163-64 (1980). “The operative word is ‘reasonable,’ which is determined by an objective standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). Further, all the circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. *See id.* at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if they reasonably believed that they were in imminent danger from the use of deadly force by another, even if, in fact, they were not, so long as the actor’s belief was objectively reasonable.

Moreover, when analyzing the reasonableness of an actor’s use of lawful deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight, which is afforded one viewing the circumstances after the fact.

Federal cases, while largely addressing the civil standards that apply to federal civil rights lawsuits, provide some discussion of the “reasonableness” standard for the use of force by police officers that is useful in analyzing officer-involved use of force cases in this state. In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer’s conduct would be judged when an excessive force claim is brought. The Supreme Court confirmed that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*,

490 U.S. at 396. The Supreme Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that Police Officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

*Id.* at 396–97; *see also Ryburn v. Huff*, 565 U.S. 469, 477 (2010).

The United States Circuit Court for the Eleventh Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or ‘magical on/off switch’ to determine when an officer is justified in using excessive or deadly force. Nor must every situation satisfy certain preconditions before deadly force can be used . . . . Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

*Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). That is because “the law does not require perfection—it requires objective reasonableness.” *Phillips v. Bradshaw*, No. 11-80002-CIV-MARRA, 2013 U.S. Dist. LEXIS 44646, at \*55-56 (S.D. Fla. Mar. 28, 2013). Specifically, the law accounts for the often fast-moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. *See Huff*, 565 U.S. at 476-77 (chastising lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a Police Officer’s assessment, made on the scene, of the danger presented by a particular situation”).

Determining whether Mr. Ely posed an imminent deadly threat to Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary and/or any third parties at the moment when the SWAT team members fired their weapons requires scrutiny of all of the evidence gathered during the investigation. This includes assessing the perceived threat posed by Mr. Ely as articulated by the

SWAT team members, and also whether the beliefs of the SWAT team members that Mr. Ely posed an imminent deadly threat to them and others was objectively reasonable. In analyzing these two separate matters, it is important to be mindful that it is unreasonable for a law enforcement officer—like a private citizen—to use deadly physical force against someone who is unarmed and not dangerous. *See, e.g., Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Here, the former is not claimed, so the analysis of the uses of deadly physical force focuses on whether Mr. Ely, armed as he was with a rifle and pistol and having access to other firearms, posed a danger to the troopers and/or any third parties as set forth by law. Thus, the analysis rests on whether Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary reasonably believed that Mr. Ely was imminently going to use deadly force against them and/or any third parties.

## VI. ANALYSIS AND CONCLUSION

For purposes of this analysis, the Attorney General has separately evaluated the lawfulness of the two volleys of gunfire by the SWAT team members that resulted in Mr. Ely's death: (1) the initial gunfire by Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czynowski, Trooper Neilsen, and Trooper Sanctuary; and (2) the three gunshots fired by TFC Larkin approximately 16 seconds after the first volley.

### **A. The Initial Volley of Gunfire by State Police SWAT Team Members TFC Nicholas Cyr, TFC Stefan Czynowski, Sergeant Gary Ingham, TFC Shane Larkin, Trooper William Neilsen, and Trooper Noah Sanctuary Was Legally Justified.<sup>60</sup>**

During the time preceding the incident, the SWAT team members were aware that Mr. Ely had been repeatedly willing to use deadly force that day. Before the SWAT team arrived, Mr. Ely had discharged a firearm at private citizens, as well as fired several shots within close proximity to the Claremont and Newport officers who were trying to speak with him and deescalate the situation. In addition, Sergeant Ingham, TFC Larkin, TFC Cyr, and TFC Czynowski were in the Bear when Mr. Ely discharged numerous rounds from a semiautomatic rifle at them. Trooper Sanctuary saw the attack from his position on the hillside.<sup>61</sup> The SWAT team members saw or were advised over the radio by Sergeant Ditolla that Mr. Ely repeatedly refused to comply with any of the commands of the Trooper Rae, the crisis negotiator, who asked him numerous times to drop his weapon. Likewise, they were aware that Mr. Ely had repeatedly pointed an AR-style rifle

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<sup>60</sup> In 2019, Trooper First Class Nicholas Cyr was involved in a non-fatal officer involved use of deadly force incident in Ossipee, New Hampshire. In 2008, TFC Czynowski was involved in a non-fatal officer involved use of deadly force incident in Manchester. Based on reviews of the facts surrounding TFC Cyr's and Czynowski's prior uses of deadly force, those incidents did not play any significant role in the events of March 31, 2021, in Claremont. The reports related to those uses of force are available on the Department of Justice website, at <https://www.doj.nh.gov/news/index.htm>.

<sup>61</sup> Trooper Sanctuary informed Trooper Nielsen of the incident.

at them, even after he was informed that they were the police. Despite repeated attempts to deescalate the situation, Mr. Ely ignored all loud hailing, put on a jacket, and walked toward the threshold of the door to exit while holding a rifle in his hand by its pistol grip. Mr. Ely demonstrated no intention of complying with the commands from Trooper Rae, who was pleading with him to drop the weapon and stop approaching.

It was at this point—with Sergeant Ingham, TFC Larkin, TFC Cyr, and TFC Czynowski positioned outside and to the sides of the Bear and Troopers Sanctuary and Nielsen on an eastern hillside—that all six SWAT team members fired at Mr. Ely, believing that he was going to exit the building armed with his rifle to flee or start engaging the SWAT team members, thereby placing the lives of the SWAT team members, nearby first responders at the command post and on the perimeter, and other private citizens within the residential areas surrounding 247 Sullivan Street in danger.<sup>62</sup> Accordingly, all the SWAT team members articulated independent decisions to fire their weapons at nearly the same moment.

There is no dispute that Mr. Ely engaged in threatening behavior and actually used deadly force before, during, and after law enforcement’s repeated attempts to resolve the standoff peacefully. Those attempts included the extensive efforts of Claremont officers and CNU team members to convince Mr. Ely to put down his weapon and surrender.

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<sup>62</sup> While several SWAT team members also noted their fear that Mr. Ely could escape and endanger others, the SWAT team members were justified in their use of force based upon the imminent threat Mr. Ely posed to them, perimeter law enforcement officers, and residents that were within the range of any gunfire by Mr. Ely. Accordingly, it is unnecessary to analyze whether the SWAT team members would have been justified in using deadly force to prevent Mr. Ely’s escape. *See* RSA 627:5, II(b)(1)(Authorizing law enforcement to use deadly force to prevent escape in certain circumstances); *see also Tennessee v. Garner*, 471 U.S. 1, 11 (1985 (“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force”).

In light of all of Mr. Ely's conduct, including his repeated firing of his rifle and refusal to comply with Trooper Rae's commands, the SWAT team members' beliefs that the use of deadly force was necessary to defend themselves as well as the other troopers on the perimeter, and/or the private citizens within range of Mr. Ely's potential gunfire, were objectively reasonable under the totality of the circumstances, bearing in mind the basis of knowledge held by the SWAT team members at the time.

That knowledge included the fact that the SWAT team members also knew that Mr. Ely had been progressively more belligerent and aggressive throughout the day, and his behavior did not evince any sign of moderation or cooperation. Mr. Ely started the day with erratic driving and apparent delusional behavior. He later: (1) shot a gun at private citizens, fortuitously missing them and only causing damage to a vehicle; (2) was profane and belligerent with the Claremont officers, who were calmly trying to communicate with him; (3) fired a gun in close proximity to those same Claremont officers, making it necessary to evacuate them with an armored truck; (4) refused to communicate or comply with the State Police crisis negotiators; (5) fired a barrage of high powered rifle rounds directly at the Bear that was carrying numerous SWAT team members; and (6) put on a jacket, handled ammunition, and approached the door with a loaded rifle, despite repeated pleas to drop his weapon and stop. Based upon this conduct, it was objectively reasonable for the SWAT team members to believe that Mr. Ely presented an imminent threat of deadly force.

Therefore, based on all the facts and circumstances known to Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary at the time Mr. Ely was about to exit his shop armed with a rifle, it was reasonable for the

SWAT team members to conclude that Mr. Ely was about to use deadly force against either them, the other troopers on the perimeter, the other first responders at the command post, or private citizens in the residential area surrounding the scene. Accordingly, Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary were legally justified in using deadly force against Mr. Ely during the first volley of gunfire. Therefore, no criminal charges will be filed against Sergeant Ingham, TFC Larkin, TFC Cyr, TFC Czyzowski, Trooper Neilsen, and Trooper Sanctuary related to the first volley of gunfire.

#### **B. Trooper First Class Shane Larkin's Gunshots Following the Initial Volley**

Based on all the facts and circumstances of this case, the Attorney General has also concluded that TFC Larkin was legally justified in his use of deadly force when he shot at Mr. Ely following the troopers' initial volley of gunfire.<sup>63</sup>

TFC Larkin only fired one shot during the initial volley of gunshots by the SWAT team members. He explained that he did not fire any additional shots at that point because he was concerned that from his angle and because of Mr. Ely's movement, he would miss. TFC Larkin said that he saw the impact of the other SWAT team members' rounds on Mr. Ely and was concerned when he did not see an effect sufficient to stop Mr. Ely and cause him to fall to the ground. He also reported that he saw Mr. Ely react when he was first struck by the rounds by starting to raise his rifle upward as if preparing to point it at the SWAT team members. TFC Larkin stated that he saw Mr. Ely eventually fall to a seated position against the wall, somewhat behind the door, which partially obscured

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<sup>63</sup> This investigation did not ultimately determine whether the shots fired by TFC Larkin during the second volley injured or contributed to Mr. Ely's death. However, since TFC Larkin's use of deadly force was legally justified, that determination has no impact on the outcome of the investigation.

TFC Larkin's view of him. TFC Larkin said that as Mr. Ely fell into that position, he saw the left side of Mr. Ely's body and his left arm continue to move. In response, TFC Larkin fired what he believed were two more rounds.<sup>64</sup> When TFC Larkin fired, he was not certain whether Mr. Ely still had his rifle, but he thought that he could see the rifle between Mr. Ely's legs.

TFC Larkin explained that everything was happening very fast. He estimated that there was only a "few seconds," possibly two or three seconds, between his first shot and his second volley of shots. TFC Larkin still believed Mr. Ely was a threat when he fired his second volley of shots. He believed that Mr. Ely was still moving and was fearful that he would try to kill them. He told investigators:

I did not want him to then just randomly as a last ditch effort take a rifle, his rifle and just start firing at us indiscriminately. We were completely exposed and now I have no idea where these rounds are gonna go to a guy knows that obviously we're here, we're shooting at him, his last ditch effort maybe thinks he's gonna die and this is what he does, this is his last ditch effort to start firing rounds off and try to kill us.

TFC Larkin's concern did not subside until TFC Cyr confirmed Mr. Ely was no longer moving. Despite the fact that none of the other SWAT team members saw Mr. Ely move at the moment TFC Larkin discharged his final rounds, general observations from the other SWAT team members corroborate TFC Larkin's observation that Mr. Ely moved.

Sergeant Ditolla, who was seated in the front passenger seat of the Bear and was looking through the windshield at the time, said that Mr. Ely "never went fully down"

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<sup>64</sup> While the audio recording documented three additional gunshots, it is not unusual or unreasonable that someone shooting a firearm in a high stress situation might not recall the exact number of rounds discharged. That point is illustrated by the various witnesses who could not recall the exact number of rounds discharged during the incident. For example, Trooper Rae believed she only heard two rounds being discharged during the second volley of gunfire as well.

after he was shot. He explained that Mr. Ely went “down slowly into a seated position while still holding the rifle.” He wrote in his report:

I watched as [Mr. Ely’s] body reacted to the impact of the rounds and he eventually slumped to what appeared to be a seated position moving more so behind the door. His body then began to slowly slump forward, still maintaining a seated position.

Sergeant Ladd explained that he saw Mr. Ely still moving after falling backward into a seated position, with the rifle still in his hands. He wrote in his report that: “[T]hen his head fell forward and he was slumped over at the waist. When I saw this happen the shooting stopped . . .” TFC Czyzowski said that he looked away after the first volley of shots. He then heard someone yell out that Mr. Ely was still moving, followed by another volley of gunshots. He said that he looked back at Mr. Ely and saw it was then that he was “now completely slumped over,” and TFC Czyzowski could not see Mr. Ely’s head.

Trooper Rae noted that she had looked toward Mr. Ely almost simultaneously as the final shots were discharged. She explained that her view was somewhat obscured, but she saw Mr. Ely down on the ground at almost the same time as she heard the additional gunshots. Accordingly, Trooper Rae’s observation in that moment neither confirms nor contradicts TFC Larkin’s observation.

Based upon these observations and TFC Larkin’s recollection of events, the movement that TFC Larkin observed, prompting his final shots, was most likely Mr. Ely slumping forward to his final point of rest. At that moment, although Mr. Ely was apparently injured by other gunshots, TFC Larkin’s perception that Mr. Ely still posed an imminent deadly threat was objectively reasonable. As noted above, the examination of the reasonableness of an actor’s use of deadly force must focus on the situation from the

standpoint of a reasonable person facing the same situation, without the benefit of hindsight.

First, everything that Mr. Ely had said and done up to that point demonstrated a willingness to use deadly force and he showed no sign of acquiescing to the numerous prior commands to surrender. He had refused to comply with attempts to communicate and commands to put his rifle down for several hours. Second, when the SWAT team members initially pushed open his door, Mr. Ely shot at them. After the door was pushed in a second time, Mr. Ely was seen moving about the shop, gathering additional ammunition, pointing a rifle at the SWAT team members, and handling a second rifle. Finally, he openly showed that he had no intent of surrendering when he extended his middle finger to the Bear shortly before he put on a jacket, and readied himself with more ammunition, before walking toward the front door.

TFC Larkin's assessment of the danger Mr. Ely posed was also informed by Mr. Ely's behavior over the course of the day. As detailed in this report, TFC Larkin had significant reason to be concerned that Mr. Ely would continue the altercation and pose a danger of deadly force if he was, in fact, capable of doing so. Mr. Ely's behavior that day showed his determination to continue to defy law enforcement and a willingness to confront them with deadly gunfire. The risk that Mr. Ely posed, of which TFC Larkin was acutely aware, was significant and ever present that evening. Knowing that Mr. Ely had already violently confronted private citizens and law enforcement alike, TFC Larkin was faced with the fact that he, Sergeant Ingham, TFC Cyr, and TFC Czyzowski were in the open, without the protection of cover and in relatively close proximity to Mr. Ely. Consequently, TFC Larkin's belief that Mr. Ely was a deadly threat to him, his fellow

troopers, and/or the general public that were within range of Mr. Ely's rifle when he saw him move was objectively reasonable.

Accordingly, TFC Larkin was legally justified in using deadly force against Jeffrey Ely, and no criminal charges will be filed against him as a result of Mr. Ely's death.